

Report from Council

Due Diligence Required When Dealing with the Elderly

Licensees should exercise due diligence when dealing with persons who appear to suffer from memory impairment, dementia or some other form of mental disability.

Licensees should be aware that there is new legislation that came into force on September 1, 2011 that deals with any incapacity on the part of an individual. The provincial government has decided to bring into force portions of the *Adult Guardianship and Planning Statutes Amendment Act, 2007* (Bill 29) as amended relating to the *Power of Attorney Act*, the *Representation Agreement Act*, advance medical directives, health care consent, and other matters. These reforms create three incapacity planning documents: enduring powers of attorney, representation agreements, and advance directives.

Section 10 of the amendments defines an enduring power of attorney to mean a power of attorney:

- (a) in which an adult authorizes an attorney (adult person) to:
 - (i) make decisions on behalf of the adult, or
 - (ii) do certain things in relation to the adult's financial affairs, and
 - (b) that continues to have effect while, or come into effect when, the adult is incapable.
- "Financial Affairs" is defined to include "an adult's business and property, and the conduct of the adult's legal affairs."

A representation agreement provides a mechanism whereby an adult may arrange in advance how, when and by whom decisions about their health care or personal care, the routine management of their financial affairs or other matters will be made if they become incapable of making decisions independently.

As of September 1, 2011, an adult person will be able to predetermine what health care they may wish to have, or not have, at a later time when they are no longer capable of giving instructions. Any adult will be able to make an advance directive in which he or she may give or refuse consent to any health care in the future provided that any instructions will not be valid and will be severed from the advance directive if carrying out these instructions would be contrary to law. Many advance directives will address end of life decisions, but the document may also be used to address specific types of treatment.

Licensees should contact family members to determine whether they or anybody else hold a power of attorney or have been appointed as a legal representative or substitute decision maker for this person under any of these statutes to ensure that this person is making the right decisions.

Licensees should obtain a true copy of the power of attorney, representation agreement or advance directive for their file, and read the document to ensure



that they are dealing with the person who has the legal authority to deal with the property.

If there are no family members, or neither the family members nor anybody else holds a power of attorney or has not been appointed as a legal representative or substitute decision maker, the licensee should ensure that the person obtains independent advice before entering into any real estate transactions.

For further information please visit www.ag.gov.bc.ca/incapacity-planning/index.htm. ■

Office Closures

The Council office will be closed on **Monday, December 26, 2011** for Boxing Day and **Tuesday, December 27, 2011** in lieu of Christmas Day. The office will also be closed on **Monday, January 2, 2012** in lieu of New Year's Day.

This Issue:

- Due Diligence Required When Dealing with the Elderly
- Receive the Council Newsletter by Email
- Council Reduces Licensing Assessment Fee
- False or Misleading Statements on a Licence Renewal Application
- Disclosure of Interest in Trade—Reminder to Licensees When Disclosure is Required
- Further Accepted Offers After a First Offer Has Been Accepted (Back-up Contracts)
- New Homes Registry—A Valuable Online Tool for Licensees
- Non-Resident Withholding Tax
- Notice of Licensee Resignation
- Disciplinary Decisions

A Note from the Chair



Bryon Brandle,
Chair

As noted in the lead article of this *Report*, licensees should exercise due diligence when dealing with persons who appear to suffer from memory impairment, dementia or some other form of mental disability. New legislation came into force on September 1, 2011 that deals with any incapacity on the part of an individual.

I urge all licensees to familiarize themselves with the information contained in this article.

The article on page 6 of this *Report* contains important information about the New Homes Registry available on the Homeowner Protection Office website. The New Homes Registry provides access to find out, among other things, if a home has a policy of home warranty insurance.

The Council continues to receive licence renewal applications that contain false or misleading statements. I remind licensees of their obligation to immediately disclose to the Council any discipline,

bankruptcy or criminal proceedings against them. For further information, please see the article on page 3 of this *Report*.

As noted in the article below, effective January 1, 2012, the Council will reduce its licensing assessment fee by \$50. The Council's website and all of the Council's forms will be updated prior the New Year to reflect this fee change.

Licensees wishing to receive the *Report from Council* newsletter by email instead of hard copy can email the Council office at info@recbc.ca. Please include your full legal name in your email, as well as the preferred email address that you would like the Council to use.

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.

Bryon Brandle
Chair

Receive the Council Newsletter by Email

Licensees wishing to receive the *Report from Council* newsletter by email instead of hard copy can email the Council office at info@recbc.ca. Please include your full legal name in your email, as well as the preferred email address that you would like the Council to use. Licensees with questions can contact the Council at 604-683-9664 or toll-free 1-877-683-9664. ■

Council Reduces Licensing Assessment Fee

As noted in the annual statistics in the October *Report from Council* newsletter, the number of licensees in the province is at all-time high levels and does not appear to be decreasing. As a result of the continued high number of licensees, Council efficiencies and its current reserves, effective January 1, 2012, the

Council will reduce its licensing assessment fee by \$50. The Council's website and forms will be updated to reflect this change at the end of December.

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

RECBC REAL ESTATE COUNCIL
OF BRITISH COLUMBIA

900-750 West Pender Street
Vancouver, BC, Canada V6C 2T8
Tel 604-683-9664
Toll-free 1-877-683-9664
Fax 604-683-9017
info@recbc.ca
www.recbc.ca

Office Hours:
Monday-Friday 8:30am-4:30pm

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

COUNCIL MEMBERS

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

STATISTICS

December 2011

Representatives: 17,677
Associate Brokers: 1,703
Managing Brokers: 1,315
Total Licensees: 20,744
Brokerages (including branch offices
and sole proprietors): 1,434

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.

Canada Post

Return undeliverable addresses to:
Real Estate Council of BC
900-750 West Pender Street
Vancouver, BC, Canada V6C 2T8

PM# 40016497

Printed on 100% post-consumer
recycled paper

False or Misleading Statements on a Licence Renewal Application

The Council continues to receive licence renewal applications that contain false or misleading statements. In particular, the Council reminds licensees of their obligation to immediately disclose to the Council any discipline, bankruptcy or criminal proceedings against them. Section 2-21 of the Council Rules requires licensees to promptly notify the Council, in writing, if:

- (a) the licensee is subject to any disciplinary or regulatory proceedings in which the licensee may be or has been made subject to a discipline sanction under legislation in British Columbia or another jurisdiction regulating (i) real estate, insurance or securities activities, or (ii) mortgage brokers, accountants, notaries or lawyers;
- (b) the licensee has any court order or judgment made against the licensee in relation to (i) real estate services, (ii) a dealing in insurance, mortgages or securities, or (iii) misappropriation, fraud or breach of trust;
- (c) any business that the licensee owns, or of which the licensee has been a director, officer or partner at any time during the past 2 years, has any court order or judgment made against the business in relation to (i) real estate services, (ii) a dealing in insurance, mortgages or securities, or (iii) misappropriation, fraud or breach of trust;
- (d) the licensee is charged with or convicted of an offence under a federal or provincial enactment or under a law of any foreign jurisdiction, excluding (i) highway traffic offences resulting only in monetary fines or demerit points, or both, and (ii) charges initiated by a violation ticket as defined in the *Offence Act* or by a ticket as defined in the *Contraventions Act* (Canada);
- (e) the licensee is the subject of any bankruptcy, insolvency or receivership proceedings;



The Council reminds licensees of their obligation to immediately disclose any discipline, bankruptcy or criminal proceedings against them.

- (f) any business that the licensee owns, or of which the licensee has been a director, officer or partner at any time during the past 2 years, is the subject of any bankruptcy, insolvency or receivership proceedings.

In addition, as a result of random spot-checks, some licence renewal applicants have signed the licence renewal form certifying that they have completed the Council's Relicensing Education Program (REP) requirements when, in fact, they had not, and that some managing brokers have signed the renewal form without ascertaining whether the licence renewal applicant has completed the required REP courses.

The Council reminds licensees that it is the joint responsibility of both the licence renewal applicant and the managing broker to ensure that the renewal form is true and complete, including the section with respect to the completion of REP courses. If a renewal form is submitted to the

Council office, and it is later determined that the licensee failed to disclose to the Council any discipline, bankruptcy or criminal proceedings against them or that they had not completed the required REP course requirements, the renewal application would be considered to be a false application. This would have serious ramifications for the licence renewal applicant, including whether or not they are suitable for continued licensing or whether they should be suspended for a period of time.

Managing brokers are reminded that, in signing an application, a managing broker certifies that they are satisfied from personal knowledge or from inquiries, that the licence renewal applicant is of good reputation and is suitable for licensing (including the completion of REP requirements), and thereby approves the application.

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

Disclosure of Interest in Trade

Reminder to Licensees When Disclosure is Required

Licensees are reminded that section 5-9 of the Council Rules requires all licensees to make disclosure in writing on the prescribed Disclosure of Interest in Trade Form to the opposite party when acquiring directly or indirectly or disposing of real estate or when providing trading services to an “associate” who is acquiring directly or indirectly or disposing of real estate. Licensees can refer to www.recbc.ca/licensee/psm.htm#ch1-4_doiit (pages 11-13 of the *Professional Standards Manual*) for a more detailed explanation of these requirements.

An “associate” includes a spouse or a family partner or a corporation, partnership, association, syndicate or an unincorporated organization in respect of which the licensee, or a spouse or a family partner of the licensee, holds not less than 5% of its capital or is entitled to receive not less than 5% of its profits. Licensees should note that children and parents of the licensee do not fall within the definition of an associate.

In order to assist licensees, the Council has prepared the following examples:

Scenario 1

A licensee is representing his daughter and her husband in the purchase of their first home. The licensee is not contributing any funds towards the purchase and has no interest in the property. As children of the licensee do not fall within the definition of an associate; the licensee would, therefore, not be required to disclose under section 5-9 of the Council Rules as he was not acquiring the property directly or indirectly.

Scenario 2

A licensee is representing his daughter and her husband in the purchase of their first home. The licensee is contributing half of the funds to purchase the prop-

erty and has a one-half interest in the property although his name is not being registered on title. The licensee is required to disclose to the seller, pursuant to section 5-9 of the Council Rules, as he is acquiring property indirectly through his daughter.

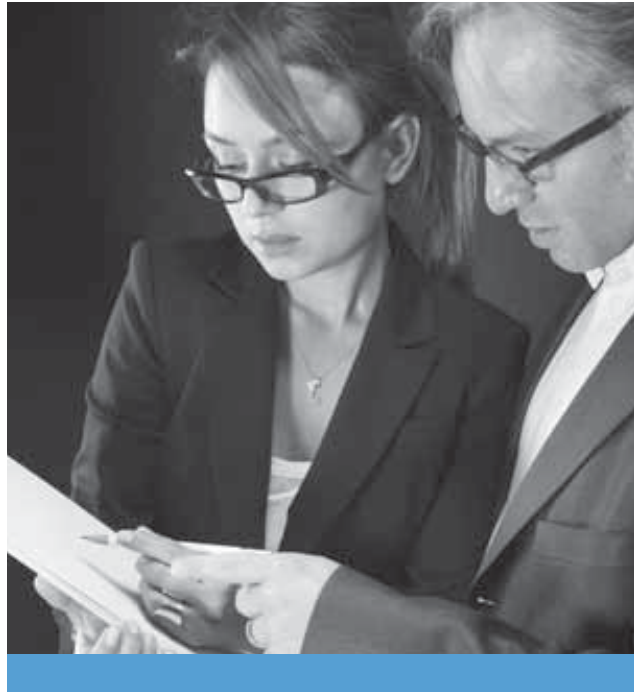
Scenario 3

A licensee who is providing trading services to another licensee in the brokerage who is acquiring or disposing of real estate, does not fall within the meaning of the definition of providing real estate services to an “associate” and, therefore, is not required to make the disclosure as required by section 5-9 of the Council Rules, as long as the licensee is not purchasing the property indirectly through another licensee in his office.

Scenario 4

A licensee is the principal shareholder of ABC Mortgage Corporation and receives more than 5% of its profits. ABC is providing financing to a buyer who has purchased property. A mortgage is then registered against the property in favour of ABC.

If there is a subsequent sale of the property and the licensee, who is the principal shareholder of ABC Mortgage Corporation which holds the mortgage registered against the property, is not providing trading services to the seller and buyer of the property and has no knowledge of the sale, that licensee would not be required to make disclosure in accordance with section 5-9 of the Council Rules.



However, if the licensee is providing trading services to either the buyer or seller or both, the licensee would have to make the disclosure as the sale includes the disposition of the legal interest held by the associate, ABC, in the property. The same licensee would also be required to disclose the potential conflict of interest as required by section 3-3(1)(j) of the Council Rules if the licensee was representing the buyer or seller or both and was at the same time holding a mortgage against the property, either personally or through a corporation.

Note: Licensees who are members of a real estate board should be aware that the Code of Ethics to which those boards subscribe contain broader disclosure obligations concerning their personal interest in a transaction than the disclosure obligations required by the Council Rules. Article 11 of the Code of Ethics can be reviewed in this regard at www.crea.ca/public/realtor_codes/code_eng_05-2011_final.pdf. ■

Further Accepted Offers After a First Offer Has Been Accepted (Back-up Contracts)

Licensees need to be aware that back-up contracts, while useful in some cases, can create problems when the contractual limitations and obligations of each party are not properly explained to all parties. For example, back-up contracts usually do not contemplate a circumstance where the second buyer finds another property and wishes to withdraw the back-up contract. Before presenting a back-up offer to a seller, the licensee acting for the second buyer should advise the buyer as to the buyer's obligations to complete the transaction should the back-up offer be accepted and the original contract collapse. The licensee should refer the buyer for legal advice where the buyer wishes to withdraw an accepted back-up contract or where the buyer wishes to include a term in the offer which permits the withdrawal of the back-up offer after acceptance.

Once an offer has been accepted but before the conditions have been removed, a back-up offer that is accepted by the seller sits in second position waiting for the first contract to either firm up or collapse. In order to avoid sellers inadvertently becoming bound by two contracts, licensees acting for sellers should ensure that back-up offers include a clause such as the following:

Back-up Contract Clause

Subject to the Seller ceasing to be obligated in any way under the previously accepted Contract of Purchase and Sale on the subject property by _____ a.m./p.m. on _____ (date).

This condition is for the sole benefit of the Seller.

The date in the back-up contract clause should be the date following the date for subject removal in the original contract and include the time of day upon which the back-up contract expires. It happens, at times, that the seller/buyer of



the first contract may seek to renegotiate terms and conditions of the first contract. Where there has been an extension of the subject removal date in the original contract, the licensee acting for the second buyer should ensure that, if the second buyer wishes to continue to be in a back-up position, the back-up contract is amended prior to the time set out in the back-up contract, to reflect the new date of subject removal in the original contract and that amendment is agreed to in writing by the seller.

A review of the case law suggests that so long as the amendments proposed to the original contract are all of a character which affirms the original contract and there has not been a breach or gap in the intention to contract between the original parties, the contract remains in full force. (See most notably *B.D. Mgmt. Ltd. v. Tajico Hldg. Ltd.*, 1988 CanLII 2932 BC C.A. where the BC Court of Appeal held that, in a circumstance where the date of completion and possession was extended by two weeks by way of an Interim Amending Agreement, the parties “did nothing other than amend a contract in certain non-fundamental details while affirming the continuing existence of that contract”. In that case, the parties had included a clause in the amending agreement which stated “all other terms and conditions contained within the said Agreement remain the same and in full force and effect.”)

However, any changes to the original contract should be approached with caution. If there has been a breach of the terms of the contract or a gap in the intention to contract so that contract has been brought to an end, the back-up offer may be activated. Licensees acting for the seller and first buyer should advise their respective clients to obtain legal advice before changing the first contract when there is a back-up contract. The licensee acting for the second buyer should also advise the second buyer to obtain legal advice under the same circumstances. Where the licensee is acting as a limited dual agent, the licensee should take care to ensure his or her impartiality.

Prior to completion of the original contract, additional offers may be accepted as back-ups in sequence by the seller. Licensees should not stop presenting offers until transactions have completed. If a seller instructs the listing agent not to show the property after a transaction is firm, then the agent must obey these instructions, but the agent should advise the seller that firm sales can collapse before completion for a variety of reasons (death of the buyer or one of the buyers, loss of job, financial disaster, unforeseen problems with the property itself, etc.), and the transaction is not a certainty until the transfer of title is complete and the money is in the seller's hands. A prudent licensee would request that a seller put such an instruction in writing. ■

New Homes Registry—A Valuable Online Tool for Licensees



The New Homes Registry (available on the Homeowner Protection Office (HPO) website at www.hpo.bc.ca), provides free access to find out if a home has a policy of home warranty insurance and is built by a licensed residential builder, or whether it is built without home warranty insurance under an exemption, such as an Owner Builder Authorization.

Licensees can use the New Homes Registry to avoid being involved in an illegal sale. The registry indicates whether an owner-built home can be legally offered for sale. Homes suspected of being illegally built, or where home warranty insurance has been withdrawn prior to issuance, will be flagged on the registry as being “under investigation.” For homes built by licensed residential builders, the New Homes Registry displays the name and contact number of the warranty provider, and the builder’s warranty number.

Every new home built for sale by a licensed residential builder in British Columbia is protected by mandatory third-party home warranty insurance. Better known as 2-5-10 home warranty insurance, this coverage includes: two years on labour

and materials (some limits apply), five years on the building envelope including water penetration, and 10 years on the structure. It’s the strongest system of construction defect insurance in Canada.

Licensees, as well as homebuyers, lawyers, local governments, and others can quickly check the residential builder licensing and home warranty status of a new home or a new home under construction by using the civic address.

All homes registered with the HPO on or after November 19, 2007 are searchable on the New Homes Registry. This includes both single detached homes and multi-unit homes, including duplexes. For residential builder and home warranty information on a home registered between July 1, 1999 and November 19, 2007, or if a property cannot be found on the registry, contact the HPO at 1-800-407-7757. Licensees can also contact the HPO for more information about homes

flagged as being “under investigation” on the registry.

The Homeowner Protection Office is a branch of BC Housing, a provincial agency within the Ministry of Energy and Mines and the Ministry Responsible for Housing. The HPO is responsible for programs that protect the home buying public in British Columbia: the licensing of residential builders and monitoring the private-sector home warranty insurance system that provides consumers with protection against defects in new homes built by Licensed Residential Builders. The HPO is also responsible for research and education related to residential construction and provides consumer information on a variety of topics of general interest to buyers of new homes.

For free access to the New Homes Registry, visit the Homebuyers section of the HPO website at www.hpo.bc.ca. ■

Non-Resident Withholding Tax

A brokerage that collects rent on behalf of a non-resident owner is required by the Canada Revenue Agency (CRA) to withhold and remit non-resident taxes of 25% of the gross income on a monthly basis. A non-resident who receives rental income can ask that a brokerage be allowed to deduct tax on the net amount instead of on the gross amount. To do this, non-residents and their agent have to complete a Form NR6, which is an undertaking to file a Cana-

dian tax return within six months of the year end. The non-resident has to file this form on or before January 1st of the tax year for which the request applies, or on or before the date the first rental payment is due. Licensees dealing with rental property owners should familiarize themselves with the requirements of the Non-Resident Withholding Tax Guide available on the Government of Canada’s website at www.cra-arc.gc.ca or, for further information, call toll-free

1-800-267-3395. Licensees should also advise their non-resident clients to obtain professional advice.

Important Note:

If a brokerage files an NR6 on behalf of a non-resident client, and the non-resident client fails to file the required tax return within six months of the tax year, the brokerage will become responsible to pay all taxes and interest owing on tax not withheld. ■

Notice of Licensee Resignation

Michael Guy Applegath and Mike Applegath Personal Real Estate Corporation requested the Real Estate Council of British Columbia to discontinue disciplinary proceedings against him as he has decided to permanently retire from real estate practice. Mr. Applegath was facing a

disciplinary hearing into his professional conduct while licensed as a representative with 639442 B.C. Ltd. dba Re/Max Real Estate (Kamloops), Kamloops, and would have been required to appear before a hearing panel of the Real Estate Council to respond to these allegations.

Considering the fact that there is likely no greater disciplinary penalty than not being licensed to act again, the Real Estate Council agreed with Mr. Applegath's request. The lifetime ban on Mr. Applegath's licensing under the *Real Estate Services Act* is effective as of October 24, 2011. ■

Disciplinary Decisions

Since the October 2011 *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

Amarpal (Paul) Singh Atwal

ISSUE: Amarpal (Paul) Singh Atwal, representative, Fraseridge Realty Ltd. dba Amex-Fraseridge Realty, Vancouver, entered into a Consent Order with the Council that, while licensed with Royal Pacific Realty (Kingsway) Ltd., Vancouver, he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in relation to a Contract of Purchase of Sale dated March 26, 2008 concerning a property on Nanaimo Street, Vancouver British Columbia and his subsequent entering into Assignment of Contract of Purchase and Sale dated April 8, 2008, in that he:

- (a) contrary to section 7(3)(a) of *Real Estate Services Act*, provided real estate services outside of his brokerage, in that he failed to submit a copy of the assignment to the brokerage;
- (b) contrary to section 5-9 of the Council Rules, failed to provide a fully completed Disclosure of Interest in Trade to the seller in that it was lacking the required information with respect to the disposition of the property;
- (c) contrary to section 5-9 of the Council Rules, did not provide a Disclosure of Interest in Trade to the assignee when Mr. Atwal assigned the contract to him;
- (d) contrary to section 3-2(2)(a) of the

Council Rules, failed to inform his managing broker of services he was providing to the assignee; and

(e) contrary to section 3-4 of the Council Rules, failed to act honestly and/or use reasonable care and skill in that he:

- (i) prepared the assignment, indicating that the amount of deposit on the contract was \$0, when he knew, or should have known that the brokerage was holding a deposit of \$30,000 in trust for this transaction; and
- (ii) removed subjects and allowed the contract to become firm and binding when he knew he would not be able to complete the contract if his assignee was unable to fulfill the terms of the assignment.

RESULT: Amarpal (Paul) Singh Atwal was suspended for forty-five (45) days from January 4, 2012 to February 17, 2012 (inclusive), and was ordered to successfully complete the Real Estate Trading Services Remedial Education Course and pay enforcement expenses to the Council in the amount of \$1,000.00.

Kamran Victory

ISSUE: Kamran Victory, representative, Multiple Realty Ltd., Vancouver, entered into a Consent Order with the Council that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he:

- (a) with respect to the sale of property on Burley Place, West Vancouver:

- (i) failed to take steps to avoid a conflict of interest when he acted as a dual agent to the sellers and to himself as buyer, contrary to section 3-3(1)(i) of the Council Rules;

(ii) failed to act with reasonable care and skill in the transaction, contrary to section 3-4 of the Council Rules; and

(b) with respect to Fundex Properties Inc. and Fundex International, Mr. Victory:

- (i) advertised real estate services whilst failing to display the licensee name of the brokerage in a prominent and easily readable way, when he promoted real estate services being offered on the website for Fundex International, contrary to section 4-6(2) of the Council Rules.

RESULT: Kamran Victory was suspended for forty-five (45) days from November 16, 2011 to December 30, 2011 (inclusive), and was ordered to successfully complete the Real Estate Trading Services Remedial Education Course and pay enforcement expenses to the Council in the amount of \$1,000.00.

Robert Gerard Watt

ISSUE: Robert Gerard Watt, currently unlicensed, while licensed as a representative, Power Play Realty Corp. dba Prudential Power Play Realty, Langley, entered into a Consent Order with the Council that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he:

- (a) contravened section 7-3(b) of the *Real Estate Services Act* by accepting remuneration directly from the seller in relation to an agreement between him and the seller that the listing contract for the property would be cancelled;
- (b) contravened section 27(1)(b) of the *Real Estate Services Act* by failing to promptly pay or deliver to his broker-

Disciplinary Decisions, *cont'd*

age the remuneration received from the seller, for deposit into the trust account of the brokerage;

(c) contravened section 3-2(2)(a) of the Council Rules by failing to keep his managing broker informed of his agreement with the seller to cancel the listing contract in exchange for the payment of the remuneration;

(d) contravened section 3-3(1)(a) of the Council Rules by failing to act in the best interests of the seller, thereby putting the seller in potential financial jeopardy by leading the seller to believe that the listing contract was cancelled on payment of the remuneration and that the seller was no longer obliged to pay a commission to the brokerage upon the sale of the property when the listing contract was still in force and the seller's obligations were intact; and

(e) contravened section 3-4 of the Council Rules by failing to act honestly and to exercise reasonable care and skill to ensure the brokerage was aware of his arrangement he had made with the seller and in entering into such an agreement.

RESULT: Robert Gerard Watt will not apply for licensing for a period of at least thirty-five (35) days from September 14, 2011 to October 18, 2011 (inclusive). Further, as a condition of continued licensing, he was ordered to successfully complete the Real Estate Trading Services Remedial Education Course and pay enforcement expenses to the Council in the amount of \$1,000.00.

Todd Alexander Gillard

ISSUE: Todd Alexander Gillard, associate broker, Okanagan Realty Inc. dba Coldwell Banker Okanagan Realty, Penticton, entered into a Consent Order with the Council that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that as an associate broker with the brokerage, he:

(a) as the owner developer and, thereafter, as an owner at a strata development, SH, he failed to comply with all the technical requirements of section 9-3 of the Council Rules when providing his own strata management services to SH, including ensuring he was:

(i) not the sole signing authority for expenditures and withdrawals;

(ii) providing the written disclaimers to SH that even though he was licensed under the *Real Estate Services Act*, he was not acting as a licensee in this matter, he was not regulated under the *Real Estate Services Act* in relation to the strata management services, and SH was not entitled to the same protections applicable under the *Real Estate Services Act* to persons who deal with licensees who are not acting under this section of the Rules; and

(iii) providing the section 9-3 disclosure to his managing broker;

(b) provided trading services on his own behalf and not through or on behalf of his related brokerage in sales of some of the development units at SH, contrary to section 7(3)(a) of the *Real Estate Services Act*;

(c) failed to promptly pay or deliver to the brokerage or other appropriate trustee under the *Real Estate Development Marketing Act* all money received from, for or on behalf of a principal in relation to real estate services, namely deposits paid to vendors relating to trading services involving five strata lots and strata management fees relating to services provided to SH, in accordance with section 27 of the *Real Estate Services Act* and section 18 of the *Real Estate Development Marketing Act*;

(d) failed to promptly provide to his managing broker:

(i) general records as described in section 8-4 of the Council Rules involving the five strata lots, including disclosure documents and written service agreements; and

(ii) trading records as described in section 8-5 of the Council Rules involving the five strata lots, including contracts, contrary to sections 3-2(1) and 5-4(b) of the Council Rules; and

(e) failed to keep his managing broker informed of the real estate services, including trading services being provided by Mr. Gillard on his own behalf.

RESULT: Todd Alexander Gillard was suspended for thirty (30) days from December 28, 2011 to January 26, 2012 (inclusive), and was ordered to pay a discipline penalty to the Council in the amount of \$1,000.00, successfully complete the Real Estate Trading Services Remedial Education Course, and pay enforcement expenses to the Council in the amount of \$1,000.00.

Lotus Byoungyeon Chung

ISSUE: Lotus Byoungyeon Chung, representative, West Coast Realty Ltd. (Coq) dba Sutton Group-West Coast Realty Ltd. (Coq), Coquitlam, entered into a Consent Order with the Council that she committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that she, in the sale by a seller of a property to a buyer by Contract of Purchase and Sale dated November 24, 2007:

(a) represented to the buyer by way of an April 22, 2008 written representation that she would repay the buyer's deposit or would cause the deposit to be repaid, when she knew or ought to have known that the representation was false or misleading, contrary to section 35(1)(c) of the *Real Estate Services Act*;

(b) failed to promptly provide the representation to her managing broker in accordance with section 3-2(1) of the Council Rules and failed to keep her managing broker informed of the real estate activities and other activities provided by her on behalf of the brokerage in accordance with section 3-2(2) of the Council Rules, contrary to section 35(1)(a) of the *Real Estate Services Act*; and

(c) failed to ensure that the contract included a subject to financing and that the buyer was aware of the importance of including or waiving that provision with the benefit of independent legal advice in light of the buyer's finances as they were known or ought to have been known to Ms. Chung, contrary to sections 3-3(1)(a), (d) and (f) and 3-4 of the Council Rules and section 35(1)(a) of the *Real Estate Services Act*.

RESULT: Lotus Byoungyeon Chung was suspended for twenty-one (21) days from December 7, 2011 to December 27, 2011 (inclusive), and was ordered to successfully complete the Real Estate Trading Services Remedial Education Course and pay enforcement expenses to the Council in the amount of \$1,000.00.

Marc Perez (Jr) Villanueva

Re/Max Marc Villanueva Realty

ISSUE: Marc Villanueva Realty Inc. dba Re/Max Marc Villanueva Realty, Co-mox, entered into a Consent Order with the Council in which it consented to an Order that it committed professional

Disciplinary Decisions, *cont'd*

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: Marc Perez (Jr) Villanueva, managing broker, Marc Villanueva Realty Inc. dba Re/Max Marc Villanueva Realty, Comox, 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: Re/Max Marc Villanueva Realty was reprimanded.

RESULT: Marc Perez (Jr) Villanueva was reprimanded.

RESULT: Further, Re/Max Marc Villanueva Realty and Marc Perez (Jr) Villanueva were jointly and severally liable to pay a discipline penalty to the Council in the amount of \$1,000.00, and were jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,000.00.

Sameh Abdul Emam

Elizabeth (Liz) Nicole Penner

ISSUE: Sameh Abdul Emam, representative, West Coast Realty Ltd. (Coq) dba Sutton Group-West Coast Realty (Coq), Coquitlam, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that, as the selling agent in the purchase of the property by the buyers, he failed to ascertain material facts about the property, namely that the annual gross property taxes were \$2,318.64 instead of the \$1,749.55 as represented by the listing agents, contrary to sections 3-3(1)(a), (h) and 3-4 of the Council Rules.

ISSUE: Elizabeth (Liz) Nicole Penner and Liz Penner Personal Real Estate Corporation, Greystars Realty International Ltd., Surrey, while licensed as Elizabeth (Liz) Nicole Penner, representative, Greystars Realty International Ltd., Surrey, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that she, as the listing agent in the listing of property on 68 Avenue, Langley, pursuant to a listing contract and a Contract of Purchase and Sale from the seller to the buyers:

(a) failed to ascertain material facts and verify them from independent sources about the property, namely that the annual gross property taxes were \$2,318.64, contrary to sections 3-3(1)(a) and 3-4 of the Council Rules; and

(b) published advertising that she ought to have known contained a false statement or misrepresentation concerning the subject property, namely that the annual gross property taxes were \$1,749.55, contrary to sections 3-3(1)(a), 3-4 and 4-7 of the Council Rules.

RESULT: Sameh Abdul Emam was reprimanded and ordered to successfully complete the Real Estate Trading Services Remedial Education Course.

RESULT: Elizabeth (Liz) Nicole Penner was reprimanded and ordered to successfully complete the Real Estate Trading Services Remedial Education Course.

RESULT: Sameh Abdul Emam and Elizabeth (Liz) Nicole Penner were ordered to be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,000.00.

Darcy Edward Nyrose

ISSUE: Darcy Edward Nyrose, representative, Horizon Realty Ltd. dba Coldwell Banker Horizon Realty, Kelowna, entered into a Consent Order with the Council that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he:

(a) accepted remuneration for real estate services from a person other than his brokerage and failed to promptly pay or deliver that remuneration to his brokerage when he accepted remuneration for real estate services directly from the seller

and deposited that remuneration into his own personal account rather than delivering same to his brokerage, contrary to sections 27(1)(b) and 7(3)(b) of the *Real Estate Services Act*; and

(b) failed to apply reasonable care and skill in that he failed to clarify, in writing, the details and circumstances under which the listing administration fee would apply, contrary to section 3-4 of the Council Rules.

RESULT: Darcy Edward Nyrose was reprimanded, and was ordered to successfully complete the Real Estate Trading Services Remedial Education Course and pay enforcement expenses to the Council in the amount of \$1,000.00.

Randy Michael Book

ISSUE: Randy Michael Book, managing broker, West Coast Realty Ltd. (Van49) dba Sutton Group-West Coast Realty (Van49), Vancouver, entered into a Consent Order with the Council that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that, as managing broker for the brokerage, in reference to a transaction in which a licensee acted as a buyer's agent regarding the purchase of a property, contravened section 3-1(4) of the Council Rules in that he failed to immediately notify all parties to the contract in writing when the deposit was not received by the brokerage until approximately ten days after it was required to be provided pursuant to the contract.

RESULT: Randy Michael Book was reprimanded and was ordered to pay enforcement expenses to the Council in the amount of \$1,000.00.

Nadine Mary Westgate

Realty Executives of the Okanagan

ISSUE: Statesmen Realty Corporation dba Realty Executives of the Okanagan (formerly known as Realty Executives of Kelowna), Kelowna, entered into a Consent Order with the Council 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.

Disciplinary Decisions, *cont'd*

ISSUE: Nadine Mary Westgate, managing broker, Statesmen Realty Corporation dba Realty Executives of Okanagan, (formerly known as Realty Executives of Kelowna), Kelowna, entered into a Consent Order with the Council that she committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by not fulfilling her 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 sections 3-1(1)(a) and (b) and 3-1(3) of the Council Rules in that she failed to ensure that the said Accountant's Report was filed with the Council by the prescribed date.

RESULT: Realty Executives of the Okanagan was reprimanded.

RESULT: Nadine Mary Westgate was reprimanded.

RESULT: Further, Realty Executives of the Okanagan and Nadine Mary Westgate were ordered to be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,000.00.

Lovedeep (Lucky) Singh Gill

ISSUE: Lovedeep (Lucky) Singh Gill, representative, Century 21 Coastal Realty Ltd., Surrey, entered into a Consent Order with the Council that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he:

(a) contravened section 2-21(2)(d) of the Council Rules by failing to promptly notify the Council in writing of criminal charges laid against him;

(b) contravened section 2-21(4) of the Council Rules by failing to notify his managing broker of the criminal charges laid against him; and

(c) contravened section 35(1)(g) of the *Real Estate Services Act* by responding "No" to the question on his licence renewal application, which states: "Have you ever been convicted of, or are you currently charged with, a criminal or other offence under a federal or provincial enactment, or under the law of any foreign jurisdiction?" which he knew or ought to have known was a false or misleading statement.

RESULT: Lovedeep (Lucky) Singh Gill was reprimanded and ordered to pay enforcement expenses to the Council in the amount of \$1,000.00.

Jie (Gina) Lin

ISSUE: Jie (Gina) Lin and Gina Lin Personal Real Estate Corporation, Legend Real Estate Group Ltd., Vancouver, while licensed as Jie (Gina) Lin, representative, Legend Real Estate Group Ltd., Vancouver, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that she failed to adequately supervise an unlicensed assistant, in that she permitted the unlicensed assistant to engage in real estate services and act as a buyer's agent when the assistant was not licensed to do so, contrary to sections 3-2(4) and 3-4 of the Council Rules.

RESULT: Jie (Gina) Lin was reprimanded, and ordered to successfully complete the Real Estate Trading Services Remedial Education Course and pay enforcement expenses to the Council in the amount of \$1,000.00.

Gurjot (Joe) Varing

ISSUE: Gurjot (Joe) Varing and Joe Varing Personal Real Estate Corporation, Homelife Glenayre Realty Company Ltd., Abbotsford, entered into a Consent Order with the Council that, while licensed as Gurjot (Joe) Varing, representative, Homelife Glenayre Realty Company Ltd., Abbotsford, and acting as a listing agent for the sellers in the listing and marketing of three contiguous properties by way of a MLS® Listing Contract, he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* and section 3-3(1)(c) of the Council Rules, in that he modified a schedule to a listing agreement without the prior written consent of the sellers.

RESULT: Gurjot (Joe) Varing was reprimanded and was ordered to pay enforcement expenses to the Council in the amount of \$1,000.00.

Frank Paul Testini

ISSUE: Frank Paul Testini, representative, West Coast Realty Ltd. (Lgly) dba Sutton Group-West Coast Realty (Lgly), Langley,

entered into a Consent Order with the Council that, while licensed with Medallion Realty Ltd. dba Sutton Group Medallion Realty, Surrey, he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he:

(a) contravened section 35(1)(g) of the *Real Estate Services Act* in that he made or allowed to be made a false or misleading statement in an application for reinstatement (transfer) of his real estate licence;

(b) contravened section 2-21(2)(d) of the Council Rules by failing to promptly notify the Council in writing of criminal charges against him, which charges were subsequently stayed by the Crown; and

(c) contravened section 2-21(4) of the Council Rules by failing to notify his managing broker of the criminal charges laid against him.

RESULT: Frank Paul Testini was reprimanded and ordered to pay enforcement expenses to the Council in the amount of \$1,000.00.

Shivraj Singh Ghuman

ISSUE: Shivraj Singh Ghuman, representative, Satnam Real Estate Services Ltd. dba SRS Panorama Realty, Surrey, entered into a Consent Order with the Council that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he contravened section 27(4)(a) of the *Real Estate Services Act* by failing to obtain a separate written agreement allowing the deposit to be held directly with the seller rather than with the brokerage.

RESULT: Shivraj Singh Ghuman was reprimanded and ordered to pay enforcement expenses to the Council in the amount of \$1,000.00.

Amex Sunrich Realty

ISSUE: Sunrich Realty Ltd. dba Amex Sunrich Realty, Richmond, entered into a Consent Order with the Council that it committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that it: (a) allowed a licensee during the suspension period to continue to advertise his services on behalf of the brokerage on his personal website and on the

Disciplinary Decisions, *cont'd*

brokerage website, contrary to sections 3(1)(a), 7(5)(a), 20, and 21(1)(a) of the *Real Estate Services Act*; and (b) failed to monitor a licensee's compliance with the terms of his suspension in that both the licensee's personal website and the brokerage's website continued to advertise the licensee as a licensee providing real estate services on behalf of the brokerage despite the fact that his licence expired on March 29, 2010 and his licence was otherwise suspended effective from May 19, 2010 to July 17, 2010, contrary to sections 7(5)(a), 20, and 21(1)(a) of the *Real Estate Services Act*.

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

Rental Property Management Services

Mona Marlene Murray

ISSUE: Mona Marlene Murray, managing broker, MCM Real Estate Ltd., Kamloops, entered into a Consent Order with the Council that she committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that she:

- (a) permitted the brokerage to provide rental property management services by a representative not licensed to do so, contrary to section 3(1) of the *Real Estate Services Act*;
- (b) failed to be actively engaged in the management of the brokerage and to ensure that the business of the brokerage was carried out competently and in accordance with the Act, Regulation, Rules and Bylaws, contrary to section 3-1(1) of the Council Rules and section 6(2) of the *Real Estate Services Act*;
- (c) failed to take reasonable steps to ensure that the business of the brokerage was being conducted by appropriately licensed individuals, contrary to section 3-1(2) of the Council Rules;
- (d) published misleading advertising in relation to a representative with the brokerage being licensed to provide property management services when he was not so licensed, contrary to section 4-7 of the Council Rules;
- (e) failed to promptly deliver and/or de-

posit all trust monies received for deposit by the brokerage to the brokerage trust account, contrary to sections 27(1), (2) and 31(2) of the *Real Estate Services Act* and contrary to section 3-1(2) of the Council Rules;

(f) permitted improper withdrawals from the brokerage trust account, contrary to section 30 of the *Real Estate Services Act*;

(g) failed to ensure proper books, accounts and other records of the brokerage were maintained, contrary to section 25 of the *Real Estate Services Act* and section 8-1 of the Council Rules;

(h) failed to ensure that the trust accounts and records of the brokerage were maintained in accordance with the Act, Regulation, Rules and Bylaws, contrary to section 3-1(3) of the Council Rules;

(i) failed to prepare, maintain and retain monthly bank reconciliations for the brokerage, contrary to section 8-2 of the Council Rules;

(j) failed to ensure that the monthly reconciliations were reviewed, dated and initialed, contrary to section 7-4(2) of the Council Rules;

(k) failed to maintain a separate trust ledger in respect of each pooled trust account, contrary to section 8-3(a)(i) of the Council Rules;

(l) failed to prepare and retain a separate trust ledger in respect of monies held or received on account of remuneration for real estate services for each pooled trust account, contrary to section 8(3)(a)(iv) of the Council Rules;

(m) failed to ensure that the brokerage had a written service agreement in respect of the provision of trading services on behalf of a client, contrary to section 5-1(i)(a), 5-1(1)(b) and 5-1(3)(a) of the Council Rules;

(n) failed to retain a tenancy agreement and other contracts with respect to the rental of real estate for which the brokerage is providing rental property management services, contrary to section 8-6(a) of the Council Rules;

(o) failed to ensure that, where a licensee disposes of real estate, the licensee makes a proper disclosure of interest in trade, contrary to section 5-9 of the Council Rules;

(p) failed to ensure that, before providing trading services to or on behalf of a party to the trade in real estate, the licensee disclosed the nature of the representa-

tion the licensee would be providing to the party and remuneration that was to be received from any other person in relation to the same trade in real estate, contrary to section 5-10 of the Council Rules;

(q) failed to ensure that, where the brokerage is acting on behalf of both parties to the transaction, the brokerage has obtained the informed consent of both parties to so act, contrary to section 3-3 of the Council Rules;

(r) failed to ensure that disclosure of remuneration was promptly provided in writing to the client and retained on the appropriate trade file, contrary to section 5-11 of the Council Rules; and

(s) failed to ensure that a trade record sheet with respect to trades in real estate contained the required information, contrary to section 8-5(2) of the Council Rules.

ISSUE: MCM Real Estate Ltd., Kamloops, entered into a Consent Order with the Council that it committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that it:

(a) failed to maintain proper books, accounts and other records, contrary to section 25 of the *Real Estate Services Act* and section 8-1 of the Council Rules; and

(b) failed to maintain and retain monthly bank reconciliations, contrary to section 8-2 of the Council Rules.

RESULT: Mona Marlene Murray was reprimanded and ordered to successfully complete Real Estate Trading Services Remedial Education Course.

RESULT: MCM Real Estate Ltd. was reprimanded.

RESULT: Mona Marlene Murray and MCM Real Estate Ltd. were ordered to be jointly and severally liable to pay a discipline penalty to the Council in the amount of \$1,500.00 and pay enforcement expenses to the Council in the amount of \$1,000.00.

Dan Allan Patrick Lobsinger Associated Property Management (2001) Ltd

ISSUE: Associated Property Management (2001) Ltd., Kelowna, entered into

Disciplinary Decisions, *cont'd*

a Consent Order with the Council that it committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by:

(a) contravening section 7(5)(a) of the *Real Estate Services Act* in that it provided real estate services through an unlicensed person;

(b) contravening section 27(5) of the *Real Estate Services Act* in that it failed to ensure that no money, other than money referred to in subsections (1) and (2) of section 27 was paid into its brokerage trust accounts; and

(c) contravening section 6-1(1) of the Council Rules in that the brokerage paid remuneration to an unlicensed person in relation to real estate services when the person was required to be licensed in order to provide those services.

ISSUE: Dan Allan Patrick Lobsinger, managing broker, Associated Property Management (2001) Ltd., Kelowna, entered into a Consent Order with the Council that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening section 3-1(1)(a) and (b) of the Council Rules in that he:

(a) permitted an unlicensed person to provide real estate services on behalf of the brokerage which required licensing under the *Real Estate Services Act*;

(b) failed to ensure that the said unlicensed person was not paid by the bro-

kerage for providing these real estate services, contrary to section 6-1(1) of the Council Rules; and

(c) failed to ensure that no money, other than money referred to in section 27(1) or (2) of the *Real Estate Services Act* was paid into the brokerage trust account.

RESULT: Associated Property Management (2001) Ltd. was reprimanded and ordered to pay the costs of the audit herein in the amount of \$881.25.

RESULT: Dan Allan Patrick Lobsinger was reprimanded ordered to successfully complete the Trading Services Remedial Education Course.

RESULT: Associated Property Management (2001) Ltd. and Dan Allan Patrick Lobsinger were ordered to be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,000.00.

James Blair Wesley Howard

ISSUE: James Blair Wesley Howard, representative, Diversified Properties Ltd., Victoria, entered into a Consent Order with the Council that, while licensed with Royal Property Management Ltd., Salt Spring Island, he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he contravened section 27(1) (a) of the *Real Estate Services Act* in that

he failed to promptly pay or deliver to his brokerage rent and deposit money received from tenants in September 2006, and instead permitted the said tenants to pay rent and deposit money by way of a credit card transaction processed by a company owned by his wife.

RESULT: James Blair Wesley Howard was reprimanded, and was ordered to successfully complete the Real Estate Trading Services Remedial Education Course and pay enforcement expenses to the Council in the amount of \$1,000.00.

Russell Guy Crouse

ISSUE: Russell Guy Crouse, managing broker, Royal Property Management Ltd., Salt Spring Island, entered into a Consent Order with the Council that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he contravened section 6(2) of the *Real Estate Services Act* and sections 3-1(1)(c) and 3-1(2)(b) of the Council Rules in that he failed to ensure that there was an adequate level of supervision of a licensee.

RESULT: Russell Guy Crouse was reprimanded, and was ordered to pay a discipline penalty to the Council in the amount of \$1,000.00 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:

Real Estate Council of British Columbia
900—750 West Pender Street
Vancouver, BC, Canada V6C 2T8
Tel: 604-683-9664 Toll-free: 1-877-683-9664
info@recbc.ca

Copyright 2011 Real Estate Council of BC

Return undeliverable addresses to:
Real Estate Council of British Columbia
900—750 West Pender Street, Vancouver, BC, Canada V6C 2T8
PM# 40016497

Disclaimer: While RECBC makes every effort to ensure that the information in this publication is current and accurate, RECBC does not warrant or guarantee that it will be free of errors. The information contained in this publication is not intended to cover all situations. It is general information only and users/readers are encouraged to seek their own independent advice for particular fact situations.