

Report from Council

Licensees Must Promptly Provide Records to Their Related Brokerage Including Buyer Agency Agreements

Section 3-2 of the Council Rules details general responsibilities of licensees in relation to their brokerages. An important aspect of those responsibilities includes promptly providing the brokerage with the original or copies of records related to the real estate services provided by the licensees. The obligation to provide these records to a brokerage 'promptly' means they must be provided without delay.

This enables the brokerage to fulfill its obligation to maintain timely, accurate, and complete records, and enables the managing broker to fulfill his or her obligation to be in active charge of the business of the brokerage. For example, it is not acceptable to provide the brokerage with a copy of a Contract of Purchase and Sale only after subjects have been removed or the deposit is received; once it has been accepted by all parties, it must be provided to the brokerage without delay.

Licensees are generally aware that when they have, on behalf of their brokerage, entered into a listing agreement, they must promptly provide the original or a copy of the listing agreement to their managing broker. However, it has come to the attention of the Council that many licensees may not be aware that this provision also applies to buyer agency

agreements. Buyer agency agreements are service agreements that are entered into by buyer-clients and licensees, on behalf of their brokerages. Therefore, licensees must also promptly provide the original or a copy of these agreements to their brokerage.

The records licensees are to provide to their related brokerage include all the records identified in sections 8-4, 8-5, 8-6, and 8-7.1 of the Council Rules that are in the possession of the licensee and were either

- prepared by or on behalf of the licensee, or
- received from or on behalf of a principal.

While the following list is not complete in terms of records that must be provided to the brokerage, it represents records related to trading services that some licensees have not promptly provided:

- Written disclosure statements (e.g. Disclosure of Remuneration, Disclosure of Interest in Trade, etc.)
- Written service agreements (e.g. listing contracts, buyer agency contracts, etc.) and other records that establish the scope



- of authority (e.g. fee agreements, etc.)
- Contracts for the acquisition and disposition of real estate (e.g. Contracts of Purchase and Sale, Offers to Lease, Tenancy Agreements, etc.)
- Information necessary to complete the Trade Record Sheet

Licensees who are uncertain about their obligations in this regard should review those sections of the Council Rules identified above. The current Council Rules are available at www.recbc.ca. ■

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STATISTICS

December 2012

Representatives: 17,877
Associate Brokers: 1,673
Managing Brokers: 1,328
Total Licensees: 20,927
Brokerages (including branch offices
and sole proprietors): 1,456

Role of the Council

The Real Estate Council is a regulatory agency established by the provincial government. Its mandate is to protect the public interest by enforcing the licensing and licensee conduct requirements of the *Real Estate Services Act*. The Council is responsible for licensing individuals and brokerages engaged in real estate sales, rental and strata property management. The Council also enforces entry qualifications, investigates complaints against licensees and imposes disciplinary sanctions under the Act.

Report from Council

The *Report from Council* newsletter is published six times per year. Past issues can be found at www.recbc.ca.

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A Note from the Chair



Michael Ziegler,
Chair

As reported last month, the Council has noticed an increase in the number of complaints from managing brokers relating to licensees not providing copies of transaction records to the brokerage in a timely manner. I remind licensees that the obligation to provide these records to a brokerage 'promptly' means they must be provided without

delay. Managing brokers play an important role in maintaining active charge of a real estate office and, in order to effectively accomplish this, licensees must provide managing brokers with copies of all transaction records.

Licensees will note that, from the Relicensing Education Program Update article on page 6, the program has been simplified. Licensees will be required to take one Legal Update course of their choice during their two-year licence period in order to renew their licence.

Licensees engaged in providing strata management services should review the article outlining their obligations

when they receive notice to terminate a service agreement. The Council has received a number of complaints about this issue and it is of utmost importance that strata management brokerages handle this situation in accordance with the Council Rules.

This newsletter contains an article that discusses the privilege of self-regulation of the real estate industry in the province. Self-regulation is a great accomplishment for the industry, but with this authority comes the obligation to regulate ourselves in a manner that is deserving of the public trust. Licensees must do their part by always holding themselves to the highest ethical standards and by always ensuring that they put the interests of their clients first.

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.

Michael Ziegler
Chair

Office Closures

The Council office will be closed on:

- **Tuesday, December 25, 2012** for Christmas Day;
- **Wednesday, December 26, 2012** for Boxing Day; and
- **Tuesday, January 1, 2013** for New Year's Day.

Self-Regulation of the Real Estate Industry in BC

The *Real Estate Services Act* (RESA) came into effect on January 1, 2005 and replaced the *Real Estate Act* that had been in existence since 1958. Under RESA, the Real Estate Council became a self-regulating organization giving it direct jurisdiction over the regulation of licensees. But what does it mean to be a self-regulating organization?

Professional self-regulation: The Statutory framework

Governments regulate a great deal of commercial activity in order to ensure that the public interest is served. One such area is the transactions between professionals and consumers. Self-regulation is a common approach used to regulate the practice of professionals in Canada. Self-regulation is based on the concept of an occupational group entering into an agreement with government to formally regulate the activities of its licensees. Professional self-regulation is a regulatory model which enables government to have some control over the practice of a profession and the services provided by its licensees but without having to maintain the special in-depth expertise required to regulate a profession that would be required under direct regulation.

In Canada, the regulation of trades and professions falls under provincial authority for the most part. Although one could say that the provinces are the regulators of the trades and professions in Canada, the term 'regulator' is most often used to refer to those bodies that have been delegated the authority to regulate a profession or trade on behalf of their respective provincial governments.

The granting of regulatory authority is done through an act of legislature (an 'act' or 'statute') which provides a framework for the regulation of a specified profession, and identifies the extent of the legal authority that has been delegated to the



Professional self-regulation enables government to have some control over the practice of a profession and the services provided by its licensees but without having to maintain the special in-depth expertise.

profession's regulatory body. The specific legal authority transferred from government to the profession's regulatory body varies with different regulatory models. In all professional regulatory models, however, in exchange for the benefits of professional status, the regulatory body of a profession is expected to develop, implement, and enforce various rules. These rules are designed to protect the public by ensuring that services from licensees are provided in a competent and ethical manner. Some associate the term 'regulation' with the discipline or 'policing' functions, but 'regulation' also includes functions such as registration and certification. The legal authorities delegated to professional associations or regulatory bodies usually include the right to:

- set standards as to who may enter the profession;
- set standards of practice for those working in the profession; and
- create rules for when and how licensees may be sanctioned or removed from the profession.

The self-regulation model also generally requires that the regulatory body put in place complaints and appeals mechanisms. Such a system permits consumers to raise concerns about services a professional provides to them, as well as provides a process to investigate and, if necessary, discipline any licensee who fails to meet professional standards of practice. Appeals processes are there to provide an

Continues on Page 4

Although professional regulation has some benefits for the profession, its essential raison d'être is to protect the public.

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additional level of confidence that decisions are made in a fair and equitable manner. Finally, professional regulatory bodies often have a mandate to educate the various stakeholders about the nature of regulation.

Protection of the public

Whether stated explicitly in the enabling legislation or implicit in such legislation is the principle that professional self-regulation is in the interest of the public. Although professional regulation has some benefits for the profession, its essential *raison d'être* is to protect the public, not to enhance the status of the profession. It is expected that all of a regulatory body's decisions and activities will be done in the "public interest." In other words, the primary purpose behind all regulatory body actions should be to protect the public from incompetent or unethical practitioners, not the forwarding of the interests of the profession.

What does it mean to be regulated?

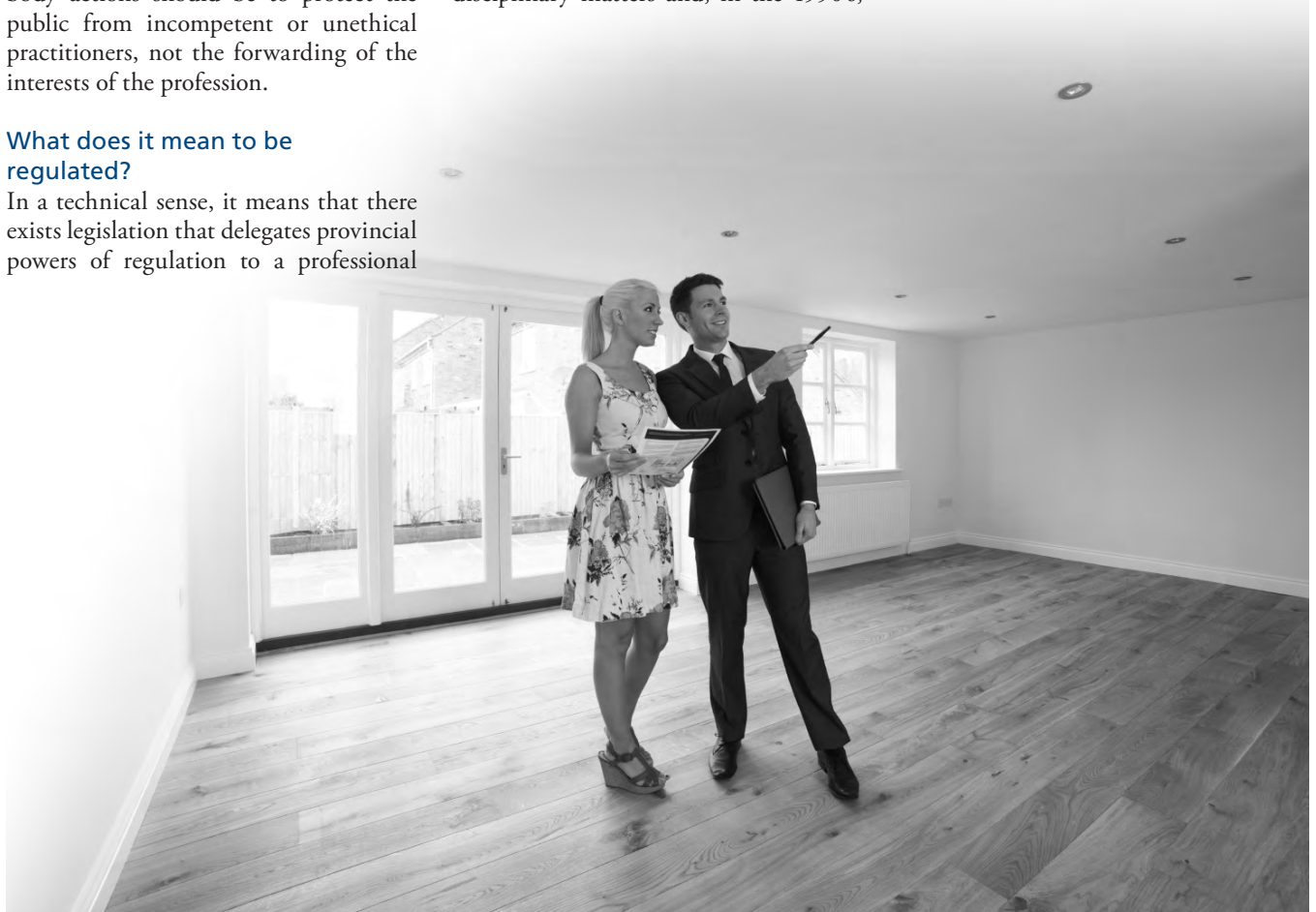
In a technical sense, it means that there exists legislation that delegates provincial powers of regulation to a professional

association or regulatory body. It means that the government has entrusted the profession to regulate itself in a manner that is consistent with the public interest. Joining the ranks of the regulated professions is an achievement that the profession can be proud of, but with this authority also comes the obligation to regulate ourselves in a manner that is deserving of this public trust.

The Real Estate Council is now in its 54th year of operation, making it one of the oldest real estate licensing bodies in North America. Since its inception, the government has continually expanded the regulatory authority of the Council. In 1985, the Council took over full responsibility for licensing. A year later, it was granted decision making authority in disciplinary matters and, in the 1990's,

the Council took over full responsibility of administering brokerage accountant's reports. This long history of service no doubt assisted the government in making decisions with respect to the level of authority that the Council was to be given under the *Real Estate Services Act*, including the shift to self-regulation, rule-making ability, and the introduction of licensing for strata managers. For the real estate industry in BC, and, in turn, the Real Estate Council, it is truly a privilege to be a self-regulating organization. ■

Portions of this article have been adapted from "What Does It Mean to Be Regulated?" by the Canadian Human Resources Professionals Association.



Asbestos Awareness is a Licensee's Responsibility

This summer, Council staff had the opportunity to meet with staff from WorkSafeBC to discuss a new WorkSafeBC emphasis on awareness about asbestos health and safety hazards relating to those undertaking repairs, renovations or demolitions in residential properties, whether done by property owners themselves or contractors. WorkSafeBC reports that incidences of asbestos related disease are increasing.

If not handled correctly, workers are in danger of inhaling asbestos-contaminated air and serious chronic health problems can occur. These diseases will not affect you immediately; they often take a long time to develop, but once diagnosed, it is often too late for corrective treatment. For licensees, heightened asbestos awareness is relevant when providing real estate services to buyers, sellers, landlords and strata corporations who are considering acquiring, disposing of, renovating, demolishing or undertaking repairs to a property that may have asbestos containing materials. This need for awareness applies equally to licensees who provide trading, rental or strata property management services. As licensees are

regularly reminded, the Council expects licensees to take appropriate steps to alert their clients to the existence of known health or environmental concerns. This would include advising clients to have a property inspected for the presence of asbestos in advance of undertaking any of the activities described above and, further, alerting clients to the consideration of the costs, which may be substantial, associated with the removal of materials that contain asbestos.

Licensees will find a safety, health and environmental inspection/testing/government approval clause on page 134 of the *Professional Standards Manual* that would be appropriate to be used by licensees representing buyers, who are offering to purchase a property in which there may be materials that may contain asbestos. This clause is also found in the online version of the *Professional Standards Manual*.

According to WorkSafeBC information, building materials containing asbestos were commonly used in construction until around 1990. Materials used that may contain asbestos include, but are not lim-

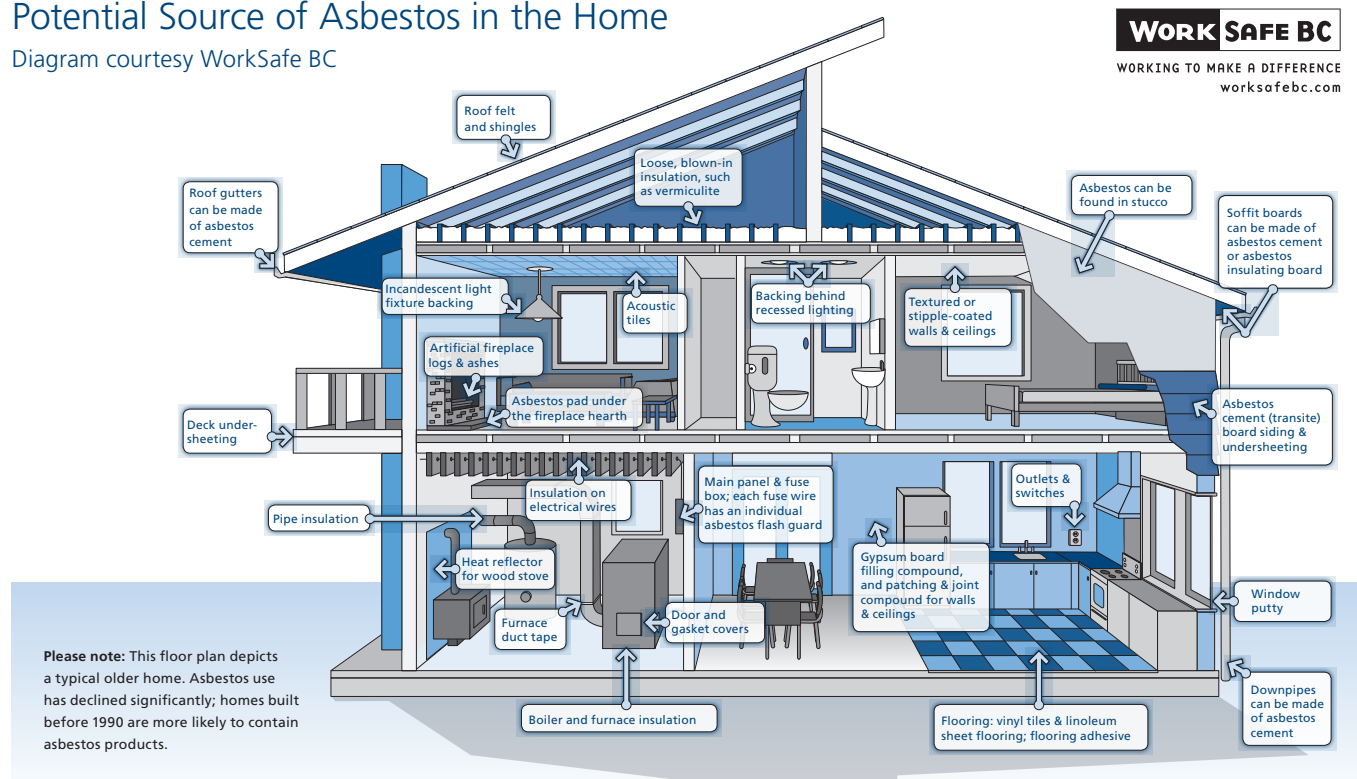
ited to, insulation; shingles and felt for roofing; exterior siding; pipe and boiler covering; compounds and cement, such as caulk, putty, roof patching, furnace cement; wallboard; texture coat; acoustic ceiling tiles and plaster; vinyl floor tiles; linoleum; and wiring. Loose-fill vermiculite insulation may also contain traces of asbestos.

Licensees will find many useful online sources about asbestos and asbestos removal, which they and their clients may wish to review, including information provided by WorkSafeBC, Canada Mortgage and Housing Corporation, the Provincial Government, and many municipalities throughout the Province. Here are links to just a few:

- www.areafund.ca/Links/Entries/2012/3/22_Graphics_Videos_and_Audio_Files_files/2009_WorkSafeBC_HomeAsbestosHazards.pdf
- www.hiddenkiller.ca
- www.cmhc-schl.gc.ca/en/co/mahol/yohoyohe/inaiqu/inaiqu_001.cfm
- www.env.gov.bc.ca/epd/hazwaste/issues/asbestos.htm ■

Potential Source of Asbestos in the Home

Diagram courtesy WorkSafe BC



Included Chattels in a Contract of Purchase and Sale

Some licensees appear to be presuming that appliances or other chattels that are listed as inclusions in MLS® information are automatically included in the sale of a property and do not have to be itemized in a Contract of Purchase and Sale. This is not true. Licensees using the BCREA Contract of Purchase and Sale are reminded that paragraph 18 states:

REPRESENTATIONS AND WARRANTIES: *There are no representations, warranties, guarantees, promises or agreements other than those set out in this Contract and the representations contained in the Property Disclosure Statement if incorporated into and forming part of this Contract, all of which will survive the completion of the sale.*

The listing of appliances or other chattels or excluded fixtures in the MLS® information is, like the listing price, a reflection of what the seller, at the time of listing the property, directs their agent to advertise as the terms under which the property may be sold. Those terms may change at the seller's instigation



or through negotiations with a buyer. Paragraph 7 of the BCREA Contract of Purchase and Sale lists many items which are to be included and provides for the creation of a schedule of included items and a schedule of excluded items. To avoid misunderstanding, it is important for licensees to ensure this clause is carefully completed to accurately reflect the intention of the parties. If any of the

items that are to be included are not in working order, the licensee should disclose this fact in writing.

For more information about included/excluded items, licensees are referred to pages 88 and 89 of the *Professional Standards Manual*. This information is also found in the online version of the *Professional Standards Manual*. ■

Relicensing Education Program Update

As previously noted in the *Report from Council* newsletter, the Council has amended its Relicensing Education Program (REP) to simplify the requirements for licensees. The amended program requires all licensees to complete **one** applicable Legal Update course during each two-year licence registration period in order to renew their real estate licence.

This means that, after you renew your licence in 2013 or 2014, you must complete **one** applicable Legal Update course prior to your next licence renewal date. If you are licensed to provide more than one service (i.e. trading services and strata management services), you are still only required to complete **one** Legal Update course. Please note that the Council's REP requirement is separate and distinct

from any educational requirements mandated by the various real estate boards throughout the province.

The following versions of the Legal Update courses are available to licensees in-class or on-line. Course registration information is available on the Council's website at www.recbc.ca/licensee/rep.html.

Trading Services:

- Real Estate E&O Insurance Legal Update Course, or
- Real Estate E&O Insurance Commercial Legal Update Course

Rental Property Management Services:

- Real Estate E&O Insurance Legal Update for Rental Property Managers

Strata Management Services:

- Real Estate E&O Insurance Legal Update for Strata Managers

If you do not complete the REP requirements within your two-year licence registration period, your licence will not be renewed.

Please note: Licensees must keep proof of completed education, including the completion certificate or transcript. These records must be kept for five years from the last date of the REP period (licence renewal date) in which the education was completed.

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

Obligations When a Strata Management Brokerage Receives Notice to Terminate Service Agreement

Section 3-3(1)(a) of the Council Rules requires that the brokerage and its related licensees act in the best interests of the client, and section 3-3(1)(b) of the Council Rules requires that the brokerage and its related licensees act in accordance with the lawful instructions of the client. In the case of strata management services, the client is the strata corporation, represented by the elected strata council. It is important to note, therefore, that the strata manager's duty is to the strata council, and not to the individual owners within the strata corporation.

When a strata council has decided to either not renew the management contract with the brokerage (for contracts that have a termination date), to terminate the contract based upon the terms of the agreement (typically by 3/4 vote of the owners at a general meeting, or by some other legal or contractual method), or if the brokerage has terminated the contract with the client, the brokerage and its licensees still have obligations to the client under the Council Rules during the remaining term of the service agreement, including continuing to fulfill the contractual service obligations, and arranging for the transfer of strata management records and funds.

When situations such as this arise, the brokerage must continue to act in accordance with the lawful instructions of the strata corporation throughout the notice period and for the duration of the contract term. It would, therefore, be a contravention of the Council Rules for the brokerage to correspond with the individual owners to inform them of either the strata council's discussions or decision to terminate the contract, unless the client has given that direction to do so. The brokerage should not attempt to:

- justify to the owners why the contract should not be terminated (for example, by writing to the owners, or by presentation at a general meeting or any other

venue—unless invited by the client to do so),

- rally the owners to vote against any motion to terminate the contract that the strata council is proposing,
- suggest that the owners petition the strata council to reverse its decision,
- suggest that the owners call a Special General Meeting by petition to remove the current strata council, or
- take any other action that is not at the direction of the client, or may be construed as acting against the client's wishes; even if the strata manager believes that these actions are in the best interest of the strata corporation.

A brokerage must not place its own interest in retaining the management contract with the strata corporation above the interests and direction of its client.

Requirements When the Service Agreement has Terminated

Transfer of funds

After the effective date of the termination of a strata management service agreement, the brokerage must **promptly** transfer control of the strata corporation's money to the strata corporation or, if the strata corporation engages another brokerage to provide strata management services, to the other brokerage. The brokerage may retain sufficient funds to pay outstanding and anticipated invoices related to expenses incurred on behalf of the strata corporation before the termination of the service agreement.

Delivery of records

If requested, the Council Rules require the brokerage to provide the following records to a former strata corporation client, or if the strata corporation engages another brokerage, to that brokerage, by the later of the date that is 4 weeks following the date of termination or the date that is 2 weeks following the date of the request:

- banking records relating to account transactions of all trust accounts held on behalf of the strata corporation, including bank statements and cancelled cheques;
- other source documents confirming deposits or withdrawals;
- a record showing amounts received and disbursed, the reason for the receipt or disbursement, and any unexpended balance;
- monthly reconciliations of banking statements of all trust accounts held on behalf of the strata corporation; and
- unless they have already been provided, invoices for expenditures incurred on behalf of the strata corporation.

Additionally, the *Strata Property Act* (SPA) also contains provisions regarding the return of a strata corporation's records when a strata management contract ends (SPA section 37 and Regulation 4.3). If the service agreement specifies a fee for the provision of photocopying services, the brokerage is entitled to charge the strata corporation for the provision of these records.

Continued retention of records

It is important to note that the brokerage has an obligation under the Council Rules to retain certain records prepared on behalf of the strata corporation, as originals or as copies of the originals, for at least 7 years after their creation. The following is a list of those records which the brokerage must retain:

- any accounting statement prepared by or on behalf of the brokerage that are provided to the strata corporation;
- invoices for expenditures incurred on behalf of the strata corporation;
- monthly banking statements from the savings institutions for all trust funds held on behalf of the strata corporation; and
- monthly reconciliations of banking statements of all trust accounts held on behalf of the strata corporation. ■

Strata Corporation Special Levy Funds to go Into a Separate Trust Account

Section 7-9 of the Real Estate Council Rules was amended on July 1, 2012 to require a brokerage that holds special levy money on behalf of a strata corporation to hold that money in at least one trust account separate from the operating fund account and the contingency reserve fund (CRF) account.

To further clarify these requirements, a number of common scenarios have been developed to assist licensees.

1. A special levy is approved in the amount of \$35,000. The resolution at the AGM stated that these funds are to be directly deposited into the CRF account.

Question: Should the money be deposited straight into the CRF account, as per the resolution, or should it go into a separate special levy account?

Answer: The brokerage should advise the strata council that the Real Estate Council Rules require that the funds to first be deposited into the special levy trust account, following which, they will be transferred into the CRF trust account in accordance with the AGM resolution.

2. A large project was started a few years ago and a special levy was approved to fund this project. The funds were deposited into the CRF bank account (as previously allowable) and the majority of the special levy money has now been spent.

Question: Should the leftover special levy funds at July 1, 2012 be deposited into a separate special levy bank account?

Answer: Yes, the requirements of section 7-9 of the Real Estate Council Rules do not differentiate between special levies received prior to July 1, 2012 and those received after this date.



It is important for licensees to note that ... an instruction to contravene either RESA or the Real Estate Council Rules would not be a lawful instruction.

Question: Should past interest on these funds, which has been deposited into the CRF account, be calculated and deposited into the special levy account?

Answer: Interest on the special levy funds should accrue directly to the special levy fund. So any interest earned on special levy funds that has not been used or paid out, should be transferred into the separate special levy bank account with the balance of the special levy funds.

3. A special levy is approved in the amount of \$57,000 because of an operating cash flow deficiency due to a bankrupt developer and the bank not paying the strata fees owed to the strata corporation for the strata lots owned by the developer.

Question: Should the \$57,000 be deposited in a separate special levy bank account and borrowed from as needed, or may it be deposited into the operating fund bank account.

Answer: The brokerage should deposit the special levy funds into a special levy bank account, and then draw on those funds as needed, at the direction of the strata council.

Licensees are sometimes directed to do something that is contrary to either the *Real Estate Services Act* (RESA) or the Real Estate Council Rules, or both. It is important for licensees to note that although the Real Estate Council Rules require that licensees follow the lawful instruction from their clients; an instruction to contravene either RESA or the Real Estate Council Rules would not be a lawful instruction. Licensees being given such direction should discuss the matter with their managing broker, advise their clients of the brokerage's obligations to RESA and the Real Estate Council Rules and inform them that the brokerage is not able to act upon any instruction that is contrary to RESA or the Real Estate Council Rules. ■

Disciplinary Decisions

Since the October 2012 *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

Yunas Hussain Mohammed

ISSUE: Yunas Hussain Mohammed, representative, OMAX Realty Ltd., Delta, 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) marketed real estate for sale outside his brokerage by way of a June 24, 2011 email, when he knew or ought to have known that he was not authorized to offer real estate services other than on behalf of the brokerage, in contravention of section 7(3) and section 35(1)(a) of the *Real Estate Services Act*; and
- (b) failed to ensure his licensee name and that of his brokerage were clearly indicated in the course of offering to provide real estate services by way of his June 24, 2011 email, in contravention of section 4-5 and 4-6(2) of the Council Rules and section 35(1)(a) of the *Real Estate Services Act*.

RESULT: Yunas Hussain Mohammed was suspended for twenty-one (21) days, from December 5, 2012 to December 25, 2012 (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.

Michael James Sikich

ISSUE: Michael James Sikich, managing broker, TRG The Residential Group Downtown Realty Ltd. dba TRG The Residential Group Downtown Realty, 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, contrary to section 6(2)(b) of the *Real Estate Services Act*, and sections 3-1(1)(a) and 3-1(1)(b) of the Council Rules, he failed to ensure the performance of the duties imposed on the brokerage, failed to be actively engaged in the management of the brokerage and failed to ensure that the business of the brokerage was carried out in accordance with the *Real Estate Services Act* and Council Rules in that he permitted an individual not licensed with the brokerage to provide real estate services on behalf of the seller, which caused the brokerage to be in breach of sections 7(5)(a) and 7(5)(b) of the *Real Estate Services Act*.

RESULT: Michael James Sikich 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 \$1,250.00.

Irene Cernigoj Eaton

ISSUE: Irene Cernigoj Eaton, representative, 62-431 Realty Ltd. dba Re/Max Penticton Realty, Penticton, 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) contravened section 27(1)(a) of the *Real Estate Services Act* in that she failed to promptly deliver to her brokerage a \$5,000.00 cash deposit received from the buyers on September 7, 2011, and instead re-directed these funds by purchasing a bank draft in that amount dated September 7, 2011, and made payable to her brokerage and delivered it to her brokerage on September 7, 2011; and
- (b) contravened section 3-4 of the Council Rules in that she represented to one of the buyers that no conditions were allowed with respect to an offer on a foreclosure property, which she knew or ought to have known was incorrect information.

RESULT: Irene Cernigoj Eaton was reprimanded, and ordered to enroll in and attend the first available CPE course "Foreclosures and Court Ordered Sales" and

pay enforcement expenses to the Council in the amount of \$1,250.00.

Sotirios (Sotos) Argyropoulos

ISSUE: Sotirios (Sotos) Argyropoulos, managing broker, Plan A Real Estate Services Ltd., Vancouver, entered into a Consent Order with the Council that, while licensed as a managing broker with Homevestors Wealth Corp., Surrey, or as a managing broker with Homevestor Realty Ltd., now known as Invigo Realty Ltd., Surrey, or one or both of them, 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 6-2(c) of the *Real Estate Services Act*, to be responsible for the control and conduct of the real estate business of Homevestors Wealth Corp. or Homevestors Realty Ltd., or one or both of them, including the supervision of the representatives who were licensed to the brokerage(s), and contrary to section 3-1(1)(a) of the Council Rules, to be actively engaged in the management of Homevestors Wealth Corp. or Homevestors Realty Ltd., or one or both of them, and contrary to section 3-3(1)(b) of the Council Rules, to ensure that the business of Homevestors Wealth Corp. or Homevestors Realty Ltd., or one or both of them, was carried out competently and in accordance with the *Real Estate Services Act* and Council Rules.

RESULT: Sotirios (Sotos) Argyropoulos was reprimanded and ordered to pay enforcement expenses to the Council in the amount of \$1,000.00.

Minkyu (Mark) Choi Hanin Realty Ltd.

ISSUE: Hanin Realty Ltd., Burnaby, 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: Minkyu (Mark) Choi, managing broker, Hanin Realty Ltd., Burnaby, entered into a Consent Order with the Council that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* 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: Hanin Realty Ltd. was reprimanded.

RESULT: Minkyu (Mark) Choi was reprimanded.

RESULT: Hanin Realty Ltd. and Minkyu (Mark) Choi were ordered to be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,000.00.

Strata Management

Kenneth Joseph Cameron Davreux

ISSUE: Kenneth Joseph Cameron Davreux, managing broker, Desert Oasis Realty Ltd. dba Royal LePage Desert Oasis Realty, Osoyoos, entered into a Consent Order with the Council that, while licensed as managing broker with Desert Oasis Realty Ltd. dba Royal LePage Desert Oasis Realty, Osoyoos; Mountain Strata Management Ltd., Osoyoos; and 494888 B.C. Ltd. dba Strata Pro Property Management Services, Osoyoos, he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening the Act, the Regulation or the Rules, and demonstrated incompetence in performing any activity for which a licence is required, in that he:

(a) in relation to 494888 B.C. Ltd. dba Strata Pro Management Services:

- (i) allowed his brokerage to provide strata management services to or on behalf of BH & R who was not a principal in relation to the strata management services and was not licensed in relation to those services, contrary to section 6-2 of the Council Rules;

(b) in relation to Desert Oasis Realty Ltd. dba Royal LePage Desert Oasis Realty:

- (i) failed to respond in a timely manner to the Council's request for information concerning the March 25, 2009 Office and Records Inspection Report, contrary to section 37(4) of the *Real Estate Services Act* and section 2-19 of the Council Rules;
- (ii) failed to respond in a timely fashion to the Council's requests for information concerning the Office and Records Inspection Report dated June 23, 2010, contrary to section 37(4) of the *Real Estate Services Act* and section 2-19 of the Council Rules;
- (iii) failed to respond to the Council's requests for information concerning the Office and Records Inspection Report dated September 30, 2010, contrary to section 37(4) of the *Real Estate Services Act* and section 2-19 of the Council Rules;

(c) in relation to Mountain Strata Management Ltd.:

- (i) permitted the brokerage to provide real estate services through an unlicensed individual by permitting KB, while unlicensed, to provide strata management services to brokerage clients, contrary to section 7(5)(a) of the *Real Estate Services Act*;
- (ii) permitted a licensee, EK, licensed with another brokerage, to provide real estate services to brokerage clients, contrary to section 7(5)(a) of the *Real Estate Services Act*;
- (iii) paid remuneration to an unlicensed person in relation to real estate services provided by that person, contrary to section 6-1(1) of the Council Rules;
- (iv) permitted the brokerage to provide strata management services without there being a proper service agreement, as required by and contrary to section 5-1(5.1) of the Council Rules;
- (v) in relation to four strata corporation clients, failed to transfer Contingency Reserve Funds (CRF) within seven days after the end of the month in which the CRF money was received contrary to section 7-9 of the Council Rules;

(d) in relation to 494888 B.C. Ltd. dba Strata Pro Property Management Services:

- (i) failed to respond to the request for information by the Council, contrary to section 37(4) of the *Real Estate*

Services Act and 2-19 of the Council Rules;

(ii) failed to transfer Contingency Reserve Funds (CRF) within seven days after the end of the month in which the CRF money was received, contrary to section 7-9 of the Council Rules;

(iii) permitted the brokerage to provide strata management services without a proper service agreement, as required by and contrary to section 5-1(5.1) of the Council Rules;

(iv) failed to take immediate steps to eliminate a trust account shortage and failed to provide notice to the Council of that shortage, contrary to section 7-5 of the Council Rules; and

(v) failed to provide to a strata corporation client disclosure of remuneration received by the brokerage for the preparation of forms B and F, contrary to section 5-11 of the Council Rules.

(e) in relation to 494888 B.C. Ltd. dba Strata Pro Property Management Services with respect to the former strata corporation client, Strata Plan 25xx, he:

(i) failed to act only within the scope of authority given by the client when he circulated a letter dated September 21, 2010 to some strata lot owners in the strata corporation which implied that the client was not acting in compliance with the *Strata Property Act*, contrary to section 3-3(1)(c) of the Council Rules;

(ii) failed to ensure that the brokerage provided in a timely manner all records referred to in section 8-2 of the Council Rules related to all trust accounts maintained on their behalf, as well as copies of all invoices verifying disbursements made on their behalf to the then former client's new brokerage, contrary to section 8-7.1(3) and section 8-7.1(4)(b) of the Council Rules.

(f) in relation to Mountain Strata Management Ltd. in respect to the brokerage's former strata corporation client, Strata Plan xx95, he:

(i) failed to ensure that the brokerage provided to the client bank statements and reconciliations for all trust accounts held on behalf of the client for the months of February, March and April 2010 no later than 6 weeks after the end of those months, respectively, contrary to section 7-9(7)(b) of the Council Rules;

Disciplinary Decisions, *cont'd*

(ii) failed to act in accordance with the lawful instruction of the client when he, contrary to section 3-3(1)(b) of the Council Rules:

a) failed to respond to its request for a copy of the month of February 2010 financial statements, as well as to requests to provide additional documentation relating to the financial statements for the months of March and April 2010;

b) failed to respond to its requests for clarification as to why the mortgage balance on the financial statement differed from the balance shown on the bank statement, as well as having subsequently failed to remedy this error as per the client's request;

c) failed to enter into a new strata insurance policy on behalf of the client with a specific insurance company, as per the client's written instruction dated April 24, 2010; and

(iii) failed to ensure that the brokerage provided in a timely manner records referred to in section 8-2 of the Council Rules that relate to all trust accounts maintained on its behalf, as well as copies of all invoices verifying disbursements made on its behalf to the client's new brokerage, contrary to section 8-7.1(3) and section 8-7.1(4)(b) of the Council Rules.

RESULT: Kenneth Joseph Cameron Davreux was ordered to remove the strata management category from his managing broker's licence and was ordered not to apply for a licence to provide strata management services for a period of five (5) years, or until September 17, 2017. As a condition of re-licensing to provide strata management services, he must successfully complete the Strata Management Supplemental Course. Further, he was ordered to pay enforcement expenses to the Council in the amount of \$2,000.00.

Kenneth George Blake Colyvan Pacific Real Estate Management Services Ltd.

ISSUE: Colyvan Pacific Real Estate Management Services Ltd., Vancouver, entered into a Consent Order with the Council that it committed professional misconduct within the meaning of sec-

tion 35(1)(a) of the *Real Estate Services Act* in that it:

(a) contravened sections 5(4) and 6(1) of the *Real Estate Services Act* by operating a branch office brokerage in Nanaimo without a branch licence;

(b) contravened section 7(5)(a) of the *Real Estate Services Act* and section 6-2(a) of the Council Rules by allowing unlicensed representatives to provide real estate services on its behalf;

(c) contravened section 7(5)(b) of the *Real Estate Services Act* and section 6-2(a) of the Council Rules by allowing a licensee to provide real estate services on its behalf when the licensee was licensed with another brokerage;

(d) contravened section 6-1(1) of the Council Rules by remunerating unlicensed representatives for acting in a licensed capacity when they were not licensees of Colyvan;

(e) contravened section 4-7 of the Council Rules by allowing the Colyvan website to advertise a representative who was not licensed with Colyvan as the contact person for Colyvan when the representative was licensed as the managing broker with another brokerage;

(f) contravened sections 5-1(4), 5-1(5), and 5-1(5.1)(a), (b) and (f) of the Council Rules by failing to ensure the service agreements with its clients included the required provisions;

(g) contravened section 25 of the *Real Estate Services Act* and sections 3-1(1)(b), 3-1(3) and 7-4 of the Council Rules by failing to maintain the books, accounts and other records of the brokerage; and

(h) contravened section 7-5 of the Council Rules by making a payment out of a trust account that resulted in a negative balance and/or made further payments out of the trust account when it was in a negative balance.

ISSUE: Kenneth George Blake, managing broker, Colyvan Pacific Real Estate Management Services 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) contravened section 3-1(1)(a) of the Council Rules by failing to be actively engaged in the management of Colyvan;

(b) contravened section 3-1(1)(b) of the

Council Rules by failing to ensure the business of Colyvan was carried out competently and in accordance with the *Real Estate Services Act* and Council Rules;

(c) contravened section 3-1(1)(c) of the Council Rules by failing to provide adequate supervision of associate brokers, representatives and employees of Colyvan;

(d) contravened section 3-1(2) of the Council Rules by failing to take reasonable steps to remedy the failures of Colyvan upon gaining knowledge of Colyvan's breaches of the *Real Estate Services Act* and Council Rules; and

(e) contravened section 25 of the *Real Estate Services Act* and sections 3-1(1)(b), 3-1(3), 7-4 and 7-5 of the Council Rules by failing to maintain the books, accounts and other records of the brokerage in accordance with the Council Rules;

RESULT: Colyvan Pacific Real Estate Management Services Ltd. was reprimanded, and was ordered to pay a discipline penalty to the Council in the amount of \$2,500.00 and pay the Council's audit costs in the amount of \$3,300.00.

RESULT: Kenneth George Blake's managing broker's licences (primary and secondary) were suspended for seven (7) days, from November 7, 2012 to November 13, 2012 (inclusive), but that he was immediately eligible to be licensed as an associate broker or representative.

RESULT: Colyvan Pacific Real Estate Management Services Ltd. and Kenneth George Blake were ordered to be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,000.00.

Michael Scott Miller

ISSUE: Michael Scott Miller, managing broker, HBM Property Management & Real Estate Ltd. dba Hometime Realty, now known as Hometime Realty & Property Management, Penticton, entered into a Consent Order with the Council that he committed professional misconduct within the meaning of section 35(1)(a) and 35(1)(d) of the *Real Estate Services Act* in that he:

(a) contravened section 3-3(1)(a) of the Council Rules in that, on January 8,

Disciplinary Decisions, *cont'd*

2008, he permitted \$20,000 to be transferred from the strata's CRF trust account to the strata's operating fund trust account without obtaining the authorization of the strata council;

(b) contravened section 3-3(1)(a) of the Council Rules in that, on January 16, 2008, he permitted a payment of \$20,000 to be made to the contractor from the strata's operating fund trust account without obtaining the authorization of the strata council;

(c) contravened section 3-3(1)(a) of the Council Rules in that, on February 12, 2008, he permitted a payment of \$5,000 to be made to the contractor from the strata's operating fund trust account without obtaining the authorization of the strata council;

(d) contravened section 3-3(1)(a) of the Council Rules in that, on February 18, 2008, he permitted \$20,000 to be transferred from the strata's CRF trust account to the strata's operating account without obtaining the authorization of the strata council;

(e) contravened section 3-3(1)(a) of the Council Rules in that, on February 25, 2008, he permitted a payment

of \$20,000 to be made to YB from the strata's operating fund trust account to satisfy a guarantee allegedly made by YB to the contractor without obtaining the authorization of the strata council;

(f) contravened section 3-1(1) of the Council Rules in that he failed to be actively engaged in the management of the brokerage, to ensure that the business of the brokerage was carried out competently and in accordance with the Act, Regulations, Rules and Bylaws, and to ensure that there was an adequate level of supervision for related associate brokers and representatives who perform duties on behalf of the brokerage.

RESULT: Michael Scott Miller was reprimanded, and was ordered to pay a discipline penalty to the Council in the amount of \$2,000.00, to successfully complete the Strata Management Remedial Education Course and to pay enforcement expenses to the Council in the amount of \$1,000.00.

Philip David Cartmel

ISSUE: Philip David Cartmel, represen-

tative, Fraser Property Management Realty Services Ltd., Maple Ridge, entered into a Consent Order with the Council that, while licensed with Taurus Commercial Real Estate Services Ltd., Surrey, he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he contravened the Act by failing to ensure that he did not provide rental property management services generally and in this case more specifically for two non-strata properties; and failed to ensure the brokerage did not advertise his services as general manager of Taurus Commercial Real Estate Services Ltd.'s Property Management Division, both during a time when he was licensed only to provide strata management services and was not licensed to provide other property management services.

RESULT: Philip David Cartmel was reprimanded, and ordered 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 \$500.00. ■

Feedback?

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

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