



Report from Council

February 2005 Volume 40, No. 4

Acting as a Limited Dual Agent

While acting as a dual agent is not prohibited by law, a licensee who wishes to act in this capacity must first receive the **informed consent** of both parties to the trade in real estate before doing so.

In this context, **informed** means that the licensee must disclose to both parties, in a timely manner,

- the nature of the conflict of interest that would arise if the licensee were to represent both parties,
- what is being proposed by the licensee, and
- the implications of giving their consent.

The timing of this disclosure is important. It must be done when it has some meaning; that is before the licensee begins to act as a dual agent, and before any potential of conflict of interest has arisen.

Consent means that, on the basis of the above information, both parties agree to the licensee acting in this capacity.

The dual agency relationship requires that the licensee act in a neutral, impartial, and objective manner. The licensee cannot advise or advocate on behalf of either party where doing so would enhance the interests of one party over the other. This means there are certain situations where it is virtually impossible for a licensee to act as a dual agent because of the relationship they have already developed with one of the parties.

For example, if a licensee has developed a

relationship with a developer and is marketing a project on behalf of that developer, should that licensee offer any form of agency to a buyer who is interested in acquiring one of the developer's offerings? Is the licensee able to remain neutral, impartial, and objective when he or she has such a close relationship with the developer? That buyer should either be treated as a customer rather than a client, or given the opportunity to seek his or her own representation.

Another example of where it is not proper to offer agency representation to a party is where a licensee is acting on behalf of a close family member or business associate who becomes interested in acquiring real estate from that other party. Can a licensee be neutral, impartial, and objective when his or her spouse is offering to buy real estate? The same logic applies if a close family member or business associate is offering real estate for sale. If a licensee is providing real estate services to their spouse by listing a property owned by that spouse for sale, that licensee should not be offering any form of agency representation to a potential buyer.

Further, if licensees are acting on their own behalf in acquiring or disposing of an interest in real estate, they should not be offering any form of agency representation to the other party in that trade.

Some licensees continue to believe that the only way they can 'double end' a deal is to act as a dual agent. This is not the case. A licensee

can act as an agent for one party, treat the other party as a customer, and receive the total commission payable. This is often exactly what the parties expect. In the example above where the licensee is the agent for the developer, a buyer who walks into the project without an agent undoubtedly knows that this licensee is the agent for the developer. Far better that the licensee confirm this with the buyer and explain the types of services he or she can provide to the buyer as a customer while acting as agent for the seller only. This scenario is well explained in the Working with a Real Estate Agent brochure published by the British Columbia Real Estate Association under the heading "Where There is no Agency Relationship."

Licensees should discuss with their managing broker any potential conflicts that may arise before entering into a dual agency relationship. Wherever possible, it is best to avoid these types of conflicts.

Further information on agency related issues is located in the Licensee Practice Manual starting at page 198.

In this Issue:

- Acting as a Limited Dual Agent
- New Clauses Regarding Illegal Use of Real Estate
- An Agent's Obligation to Disclose Remuneration
- Canadian Regulators Group Agency Task Force Report



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STATISTICS
(FEBRUARY 2005)
REPRESENTATIVES: 11,990
ASSOCIATE BROKERS: 2,034
MANAGING BROKERS: 1,295
BROKERAGES: 1,230

Role of the Council

The Council is a regulatory agency established by the provincial government. Its mandate is to protect the public by enforcing the licensing and licensee conduct requirements of the *Real Estate Services Act*. The Council is responsible for licensing real estate representatives, brokers and brokerages, enforcing entry qualifications, investigating complaints against licensees and imposing disciplinary sanctions under the *Act*.

Report from Council

The *Report from Council* newsletter is published six times per year with a supplement called *Practice Points* issued as needed. Past issues can be found on the REALTOR Link™ web site at www.realtorlink.ca

For further information, contact:
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A Note From the Chair

Earlier this month, you would have received a 2nd Special Report to Licensees detailing the requirements of the Council's Rules. I would urge you to read that Report and to keep it handy for future reference. That Report and the 1st Special Report are posted on the Council's website at www.recbc.ca. Also posted on the Council's website are the *Real Estate Services Act*, Real Estate Services Regulation, Council Rules and Bylaws.

You will note that this Report contains a number of articles dealing with agency, including information on section 5-11 of the Council Rules. This section deals with the disclosure of licensee remuneration and contains important background information on the history of this rule.

Finally, as we are only two months into having a new *Real Estate Services Act*, your continued understanding and support is



appreciated as we work together to ensure the effective roll-out of the new legislation.

On behalf of Council,
Rosemary Barnes, Chair

New Clauses Regarding Illegal Use of Real Estate

In order to assist licensees in providing increased protection for their clients, the following clauses regarding illegal use of real estate have been approved by the Council.

These clauses were originally created by the Ontario Real Estate Association and now form part of the BC Real Estate Association's online course on grow operations. The first clause can be used in situations where the seller is confirming that the property has not been used to grow or manufacture illegal substances and the second clause may be used when the buyer is

acknowledging that the property has been used for such purposes.

No Growth or Manufacture of Illegal Substances

The seller represents and warrants that during the time the seller has owned the property, the use of the property and the buildings and structures thereon has not been for the growth or manufacture of any illegal substances and that to the best of the seller's knowledge and belief, the use of the property and the buildings and structures thereon has never been for the growth or manufacture of illegal substances. This warranty shall survive and not merge on the completion of this transaction.

Growth or Manufacture of Illegal Substances

The buyer acknowledges that the use of the property in buildings and structures thereon may have been for the growth or manufacture of illegal substances and acknowledges that the seller makes no representations and/or warranties with respect to the state of repair of the premises and the buyer accepts the property and the buildings and structures thereon in their present state and in an "as is" condition.

Licensees with questions about either of these clauses may contact the Council office at 604-683-9664 or toll-free 1-877-683-9664 or email info@recbc.ca

Financial Institutions Commission Moving

After 15 years in its current location, the office of the Financial Institutions Commission ("FICOM") is moving to Central City in Surrey, B.C. Effective **Tuesday, April 5, 2005**, the new address and contact numbers for FICOM and the **Superintendent of Real Estate** will be:

1200 - 13450 102nd Avenue
Surrey, B.C. V3T 5X3

Phone: 604-953-5300
Fax: 604-953-5301

Office Closures

The Council office will be closed on Friday, March 25, 2005 for Good Friday and Monday, March 28, 2005 for Easter Monday.

An Agent's Obligation to Disclose Remuneration

Section 5-11 of the Council's Rules states:

5-11 Disclosure of additional remuneration

(1) This section applies if a licensee receives or anticipates receiving, directly or indirectly, (a) remuneration as a result of providing real estate services to or on behalf of a client, other than remuneration paid directly by the client, (b) remuneration as a result of recommending

(i) a home inspector, mortgage broker, notary public, lawyer or savings institution, or (ii) any other person providing real estate related products or services to a client, or (c) remuneration as a result of recommending a client to a person referred to in paragraph (b) (i) or (ii).

(2) The licensee must promptly disclose to the client, and to the licensee's related brokerage,

(a) the source of the remuneration, (b) the amount of the remuneration or, if the amount of the remuneration is unknown, the likely amount of the remuneration or the method of calculation of the remuneration, and (c) all other relevant facts relating to the remuneration.

Section 5-8 of the Council's Rules requires that disclosures under section 5-11 must be in writing and separate from any agreement giving effect to a trade in real estate (e.g. separate from the Contract of Purchase and Sale).

The requirements of section 5-11 are a reflection of the common law of agency, and a reworking of a similar requirement contained in both sections 36 and 9.06 of Regulation 75/61 under the previous *Real Estate Act*. Similar disclosure requirements are found in the real estate legislation of other jurisdictions such as Alberta, Saskatchewan, Ontario, and Nova Scotia.

The following quotation extracted from the research paper *Agency Law and Real Estate Brokerage: Current Issues (A Review of the Case Law and some Industry Practices)* prepared by William Foster, Faculty of Law, McGill University expresses the law with

respect to such disclosures.

"Brokers, when acting as fiduciaries, are prohibited from making any secret profits or, indeed, receiving any form of remuneration or reward from anyone but their clients in the absence of the fully informed consent of their clients to the receipt of such payment. This prohibition extends to the receipt of:

·commissions from the other party to a transaction, a situation which creates potential difficulties for brokers in buyer agency and dual agency relationships;¹

·referral fees or gifts from third parties (contractors, lending institutions, other brokers, lawyers and the like) for referring clients to them for particular purposes.²

It would appear that the prohibition on secret profits extends to payments received from third parties:

·whose services are necessary for the satisfactory consummation of the transaction itself (e.g. lenders, appraisers, building inspectors, lawyers, etc.); and

·who provide what may be described as incidental services (e.g. building contractors, landscapers, interior decorators, moving companies, etc.).

It is suggested that the acid test for determining what constitutes a secret profit is: would the payment have been earned by the broker but for the existence of the broker-client relationship in the circumstances of the case? If the answer is no, then the payment is likely to be considered a secret profit for which the broker is accountable to the client."

Section 5-11 requires this disclosure to be made to the client 'promptly'. The common law requires that such disclosures must be timely, occur before any potential conflict of interest has arisen, and when it has some meaning.

For example, consider what would be timely and effective disclosure by a licensee, acting as a buyer's agent, who anticipates receiving remuneration by way of the amount

offered to cooperating brokerages by the listing brokerage. This is not remuneration that will be paid directly by the buyer/client, and therefore the disclosure requirements of section 5-11 apply.

To begin the process of disclosure, licensees should have a general discussion about remuneration with a prospective buyer/client at the same time as the licensee is describing the services to be provided. The last two paragraphs on the first page of the Working with a Realtor brochure describe the *source of remuneration* for cooperating brokerages (buyer's agents) in many cases. In these cases, providing a buyer/client with this brochure would satisfy the requirement to disclose in writing the source of remuneration not being paid directly by the buyer/client.

There remains the obligation to disclose *the amount (or the likely amount, or the method of calculating the amount)*. One effective way would be to provide a buyer/client with a copy of the MLS® information respecting properties under consideration that includes the remuneration being offered to a cooperating brokerage. This would constitute effective disclosure so long as the full amount or method of calculation of the full amount is clear (i.e. any bonus or additional amount being offered is included in the information). Having the buyer/client initial that information would be a useful acknowledgment. Obviously, some other method of disclosure would be necessary if a property being considered was not listed on MLS®.

With respect to timing, in order to satisfy the common law requirement that disclosure be made when it has meaning, the very latest time would be before an offer is to be written.

The above only addresses a buyer's agent's remuneration with respect to the actual trade in real estate that is not to be paid directly by the buyer. The requirements of subsections 5-11(b) and (c) to disclose remuneration as a result of recommending other service providers, or a client to another service

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Licensee Remuneration *Continued from Page 3...*

provider, are not typically connected to the writing of an offer; nor are they limited to buyer's agents. However, the requirement that disclosure be 'prompt' also exists in those instances. Again, this means that it must be made before any conflict of interest arises (e.g. if you use that mortgage broker I will receive some benefit) and when it has meaning (i.e. at a time when the information can be used in considering whether to use the service provider to whom they have been referred).

While this requirement for an agent to disclose to a client any remuneration that is not to be paid directly by the client has long been a matter of law, the requirement under section 5-8 of the Council's Rules that it be in writing and separate from any agreement

giving effect to the trade in real estate is new. For that reason, a transitional period has been allowed to enable licensees to develop practices to comply with this 'in writing' aspect. The transition Rule (section 10-4) states that licensees are required to comply with the 'in writing' aspect as soon as practicable, but in any event by no later than July 1, 2005. The 'in writing' requirement is to ensure there is evidence that the disclosure has been made.

The Council is in the process of considering whether it should develop a form for use by licensees.

Regardless of the document used to make this disclosure, licensees are required to give a copy of the disclosure to the client, to their

brokerage, and to keep a copy with their own records.

Finally, it is important to note that such disclosures are required to be made to **clients**. There is no requirement for this disclosure to **customers**. Therefore, for example, a listing brokerage acting solely as an agent for a seller has no obligation to disclose remuneration to a buyer who is either unrepresented or represented by another brokerage.

¹*Cross Creek Timber Traders Inc. v. St. John Terminals Ltd.*, [2002] N.B.J. No. 77 (Q.B.).

²*Re/Max Loyalist Realty Ltd. v. Spence (c.o.b. Robert Spence Construction)*, [1993] O.J. No. 1539 (Gen. Div.);

Klingspon v. Royal LePage Real Estate Services Ltd., [1993] O.J. No. 1439 (Gen. Div.).

Canadian Regulators Group Agency Task Force Report

As reported in the March 2004 *Report from Council*, the Canadian Regulators Group (being the real estate regulatory bodies from across Canada and known as the "CRG") formed an Agency Task Force to examine the issue of agency, the application of agency laws and the development of a common or "best practices" approach, and related recommendations for the CRG to consider.

The CRG Agency Task Force Report (the "Report") is available and can be found on the CRG website at www.canadianregulators.ca under "ATF". In addition, the three research documents prepared by Professor William Foster of McGill University, which play an integral role in the conclusions and recommendations of the CRG Agency Task Force, are also available (under "Publications") for licensees to read.

Following completion of the Report, last fall the Council participated in a video conference call with other real estate regulatory bodies from across Canada dealing with the concepts and recommendations of the Report. In addition, the Report was presented to representatives of the real estate

industry at meetings of the Canadian Real Estate Association in October in Montreal.

The Council is now in the process of considering the Report's recommendations and has appointed a Task Force, chaired by Council Member Michael Ziegler. The Council's Task Force met on December 14, 2004 and undertook an extensive review of the Key Points, Conclusions, and Guiding Principles, as well as several of the sample agreements contained in the Report. Following review and discussion, the Council's Task Force then adopted a motion agreeing, in principle, with the recommendations of the Report. The Council's Task Force noted the need for further discussion and consultation with the industry, particularly with respect to the proposed models and forms contained in the Report, as well as any possible implementation and related education issues.

The Council will not be dealing with the Report's recommendations until such time as the consultation process with industry is completed. In that regard, the Council has been advised that several real estate boards

and the British Columbia Real Estate Association have appointed their own task forces to review the Report's recommendations. The Council looks forward to receiving the industry's view of the Report, following which the Council will consider the Report's recommendations.

It should be noted that each real estate regulatory body across Canada will be independently considering the Report's recommendations. They will report on their progress to-date at a meeting scheduled to take place during the last week of May 2005. Should there be consensus amongst the participants at that time (or at a later date if some jurisdictions have not yet dealt with the Report's recommendations), the next step for the CRG would be to develop a unified approach to implementing the Report's recommendations.

Should you wish to provide comments about the Report, please contact Robert O. Fawcett, Executive Officer (rfawcett@recbc.ca) or Larry Buttress, Industry Practice Manager, (lbuttress@recbc.ca).

Disciplinary Decisions

Since the December 2004 *Report from Council* newsletter, the following actions have been taken as a result of disciplinary hearings and Consent Orders conducted by the Council.

➤ **Complaint:** Breach of Section 12.03 of Regulation 75/61 under the *Real Estate Act*

■ **Issue:** Kootenay Country Realty Ltd., Kaslo, had failed to file an Accountant's Report in the prescribed form with the Real Estate Council by the prescribed date.

✍ **Penalty:** Kootenay Country Realty Ltd. had been suspended for 180 days, from June 23, 2004 to December 19, 2004 (inclusive) for failure to provide the above described Accountant's Report by June 15, 2004. As the Accountant's Report has still not been received by the Real Estate Council, effective December 20, 2004 the licence of Kootenay Country Realty Ltd. has been cancelled.

➤ **Complaint:** Breach of Sections 9.12 and 12.03 of Regulation 75/61 under the *Real Estate Act/Incompetence*

■ **Issue:** David Read Cochrane, nominee, ResCom International Brokers Inc., Courtenay, as nominee for the agent, was incompetent within the meaning of Section 9.12 of Regulation 75/61 under the *Real Estate Act* in that he failed to ensure that the agent had filed an Accountant's Report in the prescribed form with the Real Estate Council on or before the prescribed date.

✍ **Penalty:** David Read Cochrane's nominee licence was suspended for one year from December 16, 2004 to December 15, 2005 (inclusive). As a condition of relicensing as a nominee, he must successfully complete Chapter 2 (Mandatory Requirements of the *Real Estate Act* of British

Columbia) of the Real Estate Agent's Pre-Licensing Course. Mr. Cochrane is eligible for licensing as a salesperson after a suspension period of twenty-one (21) days, from December 16, 2004 to January 5, 2005. In addition, David Read Cochrane and ResCom International Brokers Inc. are jointly and severally assessed costs of \$679.40

➤ **Complaint:** Breach of Sections 43(1) and 43(2) of the *Real Estate Act* and Section 9.06 of Regulation 75/61 under the *Act*

■ **Issue:** Jennifer Lai Won Ng, salesperson, Re/Max Terry Eng, Vancouver, breached: (i) Section 43(1) of the *Real Estate Act* in that she engaged in a real estate transaction or transactions on behalf of an agent other than the agent who, according to the records, was her employer; (ii) breached Section 43(2) of the *Act* in that she accepted commission or other remuneration in respect of a real estate transaction or transactions from a person not being the agent who was registered as her employer; (iii) breached Section 9.06 of Regulation 75/61 under the *Act* in that she claimed or took secret or undisclosed compensation, commission or profit or failed to reveal to her employer or principal the full amount of her compensation, commission or profit in respect of a real estate transaction.

✍ **Penalty:** Jennifer Lai Won Ng was suspended for thirty (30) days, from December 17, 2004 to January 15, 2005 (inclusive) for breaches as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Ms. Ng and a Consent Order was issued. In addition, as a condition of continued licensing, she is required to successfully complete Chapter 2 (The *Real Estate Act* and The Code of Ethics and Standards of Business Practice) of the Real Estate Salesperson's Pre-Licensing Course and is jointly and severally

liable for payment of costs of \$500.00 to the Real Estate Council.

➤ **Complaint:** Breach of Section 9.12 of Regulation 75/61 under the *Real Estate Act/Negligence*

■ **Issue:** Robin Charles Codrington Hobkirk, salesperson, Green Acres Realty (1992) Ltd., Langley, was negligent within the meaning of Section 9.12 of Regulation 75/61 under the *Real Estate Act* in that he: (i) failed to ascertain and/or disclose to a buyer and/or their salesperson that there were no written contractual arrangements with the neighbour who supplied water to the property and that the water supply was provided entirely at the discretion of the neighbour; (ii) failed to recommend to the sellers to detail the water supply arrangements with the neighbour in the property disclosure statement and in the contract, so that there would be no later misunderstanding with regard to the water supply.

✍ **Penalty:** Robin Charles Codrington Hobkirk was suspended for thirty (30) days, from January 19, 2005 to February 17, 2005 (inclusive) for negligence as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Mr. Hobkirk and a Consent Order was issued. In addition, as a condition of continued licensing, he is required to enroll in and attend the first available Legal Update Course and to pay costs in the amount of \$250.00.

➤ **Complaint:** Breach of Section 9.12 of Regulation 75/61 under the *Real Estate Act/Negligence*

■ **Issue:** Wade Richard Traversy, currently unlicensed, who, while licensed as a salesperson with Olympia-Pacific Interactive Realty, Surrey, was negligent within the

meaning of Section 9.12 of Regulation 75/61 under the *Real Estate Act* in that he: (i) failed to communicate with another licensee at another agent who had prepared an offer to acquire the property; (ii) failed to turn the exclusive listing contract that had been signed by the sellers of the property into his employing agent; (iii) allowed the sellers to execute a further listing agreement with another agent thereby putting the sellers at risk of having to pay a double commission, without obtaining the release of the exclusive listing agreement with his agent.

✍ Penalty: Wade Richard Traversy will be suspended for twenty-one (21) days, upon licence reissuance, for negligence as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Mr. Traversy and a Consent Order was issued. In addition, as a condition of relicensing, he is required to successfully complete Chapter 2 (Mandatory Requirements of the *Real Estate Act* of British Columbia) of the Real Estate Agent's Pre-Licensing Course, to enroll in and attend the first available Legal Update Course, and to pay to the Real Estate Council legal costs of \$400.00.

➤ **Complaint:** Breach of Section 9.12 of Regulation 75/61 under the *Real Estate Act*/Negligence

■ **Issue:** Hoang Ngoc (Houston) Ngo, salesperson, Royal LePage Northstar Realty, Surrey, was negligent within the meaning of Section 9.12 of Regulation 75/61 under the *Real Estate Act* in that he: (i) paid an increase in the deposit to his agent on behalf of the buyer from his own funds without the consent of the seller and which was not in accordance with the terms of the Contract of Purchase and Sale; (ii) failed to make sure that deposits were received in a timely manner as per the terms and conditions of the Contract of Purchase and Sale in four transactions and that he failed to ensure that both the buyer and the seller in the said transactions dated and signed a "late acknowledgment form".

✍ **Penalty:** Hoang Ngoc (Houston) Ngo was suspended for twenty-one (21) days, from January 26 to February 15, 2005 (inclusive) for the breaches described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Mr. Ngo and a Consent Order was issued. Further, as a condition of continued licensing, he was ordered to successfully complete Chapter 10 (The Law of Contract) and Chapter 11 (Contracts for Real Estate Transactions) of the Real Estate Salesperson's Pre-Licensing Course and to pay legal costs in the amount of \$500.00.

➤ **Complaint:** Breach of Section 9.12 of Regulation 75/61 under the *Real Estate Act*/Negligence

■ **Issue:** Gerard Michael Doody, salesperson, Sutton Centre Realty, Burnaby, was negligent within the meaning of Section 9.12 of Regulation 75/61 under the *Real Estate Act* in that, as a limited dual agent, he failed to take reasonable steps to ascertain the ownership for a property and, in particular, whether the purported principal of the seller had the authority to bind the seller to a listing contract and a Contract of Purchase and Sale.

✍ **Penalty:** Gerard Michael Doody was suspended for fourteen (14) days, from December 8 to December 21, 2004 (inclusive) for negligence as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Gerard Michael Doody and a Consent Order was issued. In addition, as a condition of continued licensing, he is required to successfully complete Chapter 10 (The Law of Contract) and Chapter 11 (Contracts for Real Estate Transactions) of the Real Estate Salesperson's Pre-Licensing Course.

➤ **Complaint:** Breaches of Section 9.12 of Regulation 75/61 under the *Real Estate Act*/Negligence

■ **Issue:** Danette Lynn Ball, salesperson, Coldwell Banker Tri-Tel Realty, Maple Ridge, breached Section 9.12 of Regulation 75/61 under the *Real Estate Act* in that, while acting as salesperson for the buyer's agent, Coldwell Banker Tri-Tel Realty, in the purported purchase of property from the seller, she: (i) failed to take reasonable steps to discover facts pertaining to the subject property when acting as a salesperson for the buyer's agent; (ii) failed to confirm particulars of the seller's ability to provide a warranty, as represented in the contract.

■ **Issue:** Ronald Louis Patrick Antalek, salesperson, Re/Max Ridge-Meadows Realty, Maple Ridge, breached Section 9.12 of Regulation 75/61 under the *Real Estate Act* in that, while acting as salesperson for the listing agent, Re/Max Ridge-Meadows Realty he: (i) failed to take reasonable steps to discover facts pertaining to the subject property for which he had accepted an agency agreement and, in particular, he failed to ascertain that the seller was not the owner of the subject property; (ii) failed to advise the buyer or the buyer's agent that the seller was not the owner of the subject property and failed to advise the buyer or the buyer's agent of the nature of the seller's interest to acquire the property from the registered owner; (iii) represented to the buyer and their agent that a company could build a residential house on the property on specified terms and in accordance with the Contract of Purchase and Sale when he knew or ought to have known that this was untrue or misleading as it did not have the mandatory insurance coverage as required.

✍ **Penalty:** Danette Lynn Ball and Ronald Louis Patrick Antalek were each suspended for ten (10) days, from December 22 to December 31, 2004 (inclusive) for the breaches described above, after Agreed Statement of Facts, Proposed Acceptance of Findings and Waivers were entered into between the Real Estate Council and Ms. Ball and the Real Estate Council and Mr. Antalek, and Consent Orders were issued. In addition, as a condition of continued licensing, they

are required to enroll in and attend the first available Legal Update Course.

➤ **Complaint:** Breach of Section 9.12 of Regulation 75/61 under the *Real Estate Act/ Negligence*

■ **Issue:** Gail Irene Dowding, salesperson, Century 21 Sagewinds Realty Ltd., Keremeos, was negligent within the meaning of Section 9.12 of Regulation 75/61 under the *Real Estate Act* in that she: (i) failed to ensure that the deposit money was received from the buyer within 24 hours of acceptance as was required under the Contract of Purchase and Sale; (ii) failed to advise the seller and/or its agent in a timely manner that the deposit had not been made by the buyer within 24 hours of acceptance of the offer under the contract.

✍ **Penalty:** Gail Irene Dowding was suspended for seven (7) days, from December 1 to December 7, 2004 (inclusive). In addition, as a condition of continued licensing, she is required to successfully complete Chapter 2 (The *Real Estate Act* and The Code of Ethics and Standards of Business Practice) of the Real Estate Salesperson's Pre-Licensing Course.

➤ **Complaint:** Breach of Section 9.12 of Regulation 75/61 under the *Real Estate Act/ Negligence*

■ **Issue:** Joan Elizabeth McMurray, salesperson, Royal LePage Locations West Realty, Penticton, who, while licensed with Century 21 Sagewinds Realty Ltd., Keremeos, was negligent within the meaning of Section 9.12 of Regulation 75/61 under the *Real Estate Act* in that she: (i) failed to ensure that the deposit money was received from the buyer within 24 hours of acceptance as was required under the Contract of Purchase and Sale; (ii) failed to advise the seller and/or its agent in a timely manner that the deposit had not been made by the buyer within 24 hours of acceptance of the offer under the contract.

✍ **Penalty:** Joan Elizabeth McMurray

was reprimanded for negligence as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Joan Elizabeth McMurray and a Consent Order was issued. In addition, as a condition of continued licensing, she is required to successfully complete Chapter 2 (The *Real Estate Act* and The Code of Ethics and Standards of Business Practice) of the Real Estate Salesperson's Pre-Licensing Course.

➤ **Complaint:** Breach of Section 61(9) of the *Real Estate Act* and Section 9.12 of Regulation 75/61 under the *Real Estate Act/ Negligence*

■ **Issue:** Marlene Joy Arden, salesperson, Royal LePage Coast Capital Realty, Sooke, who, while licensed with Coast Capital Real Estate Ltd., Sooke, was negligent within the meaning of Section 9.12 of Regulation 75/61 under the *Real Estate Act* in that she: (i) represented in the listing information or led the said buyers to believe that the said property was freehold when she ought to have known that it was a bare land strata; (ii) failed to ascertain the legal status of the said property at the time it was listed and sold to the said buyers; (iii) failed to ensure that the disclosure statement and any amendments thereto were delivered to the said buyers and that the said buyers were given an opportunity to read the disclosure statement prior to entering into the said Contract of Purchase and Sale as required by Section 61(9) of the *Real Estate Act*; (iv) failed to submit the listing documents with respect to the said property to her agent for review and approval in a timely manner.

✍ **Penalty:** Marlene Joy Arden was suspended for seven (7) days, from December 8 to December 14, 2004 (inclusive) for negligence as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Marlene Joy Arden and a Consent Order was issued. In addition, as a condition of

continued licensing, she is required to enroll in and attend the first available Legal Update Course and is jointly and severally liable for costs of \$500.00.

➤ **Complaint:** Breach of Section 61(9) of the *Real Estate Act* and Section 9.12 of Regulation 75/61 under the *Real Estate Act/ Negligence*

■ **Issue:** Michael John Dick, agent 9.15, Royal LePage Coast Capital Realty, Sooke, who, while licensed with Coast Capital Real Estate Ltd., Sooke, was negligent within the meaning of Section 9.12 of Regulation 75/61 under the *Real Estate Act* in that he: (i) failed to ensure that the disclosure statement and any amendments thereto were delivered to the said buyers and that the said buyers were given an opportunity to read the said disclosure statement prior to entering into the Contract of Purchase and Sale as required by Section 61(9) of the *Real Estate Act*; (ii) failed to ensure that extensions to the subject removal dates were obtained in writing from the parties to the said contract before the expiry of same; (iii) failed to protect the interests of the said buyers in the said Contract of Purchase and Sale by not including a date by which the scrap metal was to be removed from the subject property.

✍ **Penalty:** Michael John Dick was reprimanded for negligence as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Mr. Dick and a Consent Order was issued. In addition, as a condition of continued licensing, he is ordered to enroll in and attend the first available Legal Update Course and is jointly and severally liable for costs of \$500.00.

➤ **Complaint:** Breach of Section 9.12 of Regulation 75/61 under the *Real Estate Act/ Negligence*

■ **Issue:** Darren Aun, salesperson, Coldwell Banker Premier Realty, Vancouver, was negligent within the meaning of Section

9.12 of Regulation 75/61 under the *Real Estate Act* in that he: (i) failed to ensure that the deposit money was received from the buyer upon subject removal as was required by the Contract of Purchase and Sale; (ii) failed to advise the seller and/or its agent, in a timely manner, that the deposit had not been made by the buyer upon subject removal.

Penalty: Darren Aun was suspended for seven (7) days, from January 26, 2005 to February 1, 2005 (inclusive) for negligence as described above, after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Mr. Aun and a Consent Order was issued. In addition, as a condition of continued licensing, he is required to successfully complete Chapter 2 (The *Real Estate Act* and the Code of Ethics and Standards of Business Practice) of the Real Estate Salesperson's Pre-Licensing Course, to enroll in and attend the first available Legal Update Course, and to pay costs in the amount of \$500.00.

Complaint: Breach of Section 9.12 of Regulation 75/61 under the *Real Estate Act*/ Negligence

Issue: Century 21 Sagewinds Realty Ltd., Keremeos, was negligent within the meaning of Section 9.12 of Regulation 75/61 under the *Real Estate Act* in that it failed to notify the seller or the seller's agent in a timely manner when the deposit had not been made by the buyer within 24 hours of acceptance of the offer under the contract.

Issue: Robert Francis Coke Richards, currently unlicensed, who, while licensed as nominee for Century 21 Sagewinds Realty Ltd., Keremeos, was negligent within the meaning of Section 9.12 of Regulation 75/61 under

the *Real Estate Act* in that he: (i) failed to ensure that Century 21 Sagewinds Realty Ltd. had received the deposit from the buyer within 24 hours of acceptance of the contract; (ii) failed to ensure that the seller or the seller's agent was notified in a timely manner that the deposit had not been made by the buyer within 24 hours of acceptance of the offer under the contract.

Penalty: Century 21 Sagewinds Realty Ltd. was reprimanded for negligence as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Robert Francis Coke Richards on behalf of Century 21 Sagewinds Realty Ltd. and a Consent Order was issued.

Robert Francis Coke Richards will be suspended for fourteen (14) days, upon relicensing, for negligence as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Mr. Richards and a Consent Order was issued. In addition, as a condition of relicensing, he is required to enroll in and attend the Legal Update Course.

Complaint: Breach of Section 9.12 of Regulation 75/61 under the *Real Estate Act*/ Negligence

Issue: Ralph Dennis Angus Kennedy, nominee, Re/Max Masters Realty, West Vancouver, was negligent within the meaning of Section 9.12 of Regulation 75/61 under the *Real Estate Act* in that he failed to take steps to ensure that potentially misleading internet website advertising was corrected following the lapse of a licensee's licence.

Penalty: Ralph Dennis Angus

Kennedy was reprimanded for negligence as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Mr. Kennedy and a Consent Order was issued. In addition, as a condition of continued licensing, he is required to pay costs in the amount of \$500.00.

Complaint: Breach of Section 36 of the *Real Estate Act*

Issue: Patricia Yuk-Wah Wong, salesperson, Cathay Pacific Realty Ltd., Vancouver, breached Section 36 of the *Real Estate Act* in that, before assisting or representing any person in a real estate transaction, she failed to make sufficient disclosure to the owner of the property in question as to her agency status including: (i) the nature of her assistance or representation that she would be providing to the owner; (ii) whether she is, or will be, acting in the real estate transaction on behalf of any other person, in any capacity; (iii) whether she is, or will be, receiving remuneration relating to the real estate transaction from any person; (iv) the nature of her relationship with any other person from whom she is, or will be, receiving remuneration relating to the real estate transaction.

Penalty: Patricia Yuk-Wah Wong was reprimanded for breach of Section 36 as described above, after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Ms. Wong and a Consent Order was issued. In addition, as a condition of continued licensing, Ms. Wong is required to successfully complete Chapter 12 (The Law of Agency) of the Salesperson's Pre-Licensing Course and to pay costs in the amount of \$500.