

Report from Council

Advertising Must Contain the Name of the Related Brokerage

The Council continues to receive complaints from both consumers and licensees with respect to licensee advertising. These complaints fall into two main types: 1) failure to include the name of the related brokerage on advertising and, 2) the name of the related brokerage is too small in relation to the rest of the advertisement.

Licensees should be aware that section 4-6(2) of the Council Rules requires the name of the related brokerage (e.g. ABC Realty Surrey Ltd.) to be displayed on all advertising. It also must be displayed in a prominent and easily readable way. Tiny and hard to read font sizes at the bottom of an advertisement are not acceptable to the Council.

Licensees should also be aware that section 57(1) of the *Real Estate Services Act* allows the Council to impose administrative penalties on licensees who fail to adhere to the Council Rules. In that regard, in accordance with section 2-23 of the Council Rules, the administrative penalties for a contravention of a rule specified by regulation under section 56(1) [rules subject to administrative penalties] of the Act are as follows:

- (a) \$250 for a first contravention;
- (b) \$500 for a second contravention;
- (c) \$1000 for a third or subsequent contravention.

Full details of the Administrative Penalties Policy Statement #1 were outlined in the August 2005 *Report from Council* newsletter. The Policy Statement is also posted on the Council's website at www.recbc.ca.

Section 4-6(2) of the Council Rules applies to all advertising materials, including, but not limited to, the following: TV ads and/or channels, all websites and web pages (This includes websites such as FACEBOOK, MYSPACE, EBAY, USEDVANCOUVER, CRAIGSLIST, USEDVICTORIA, etc.), email (and any other on-line identification, representation, promotion or solicitation), bus shelters and bus stop benches, newspaper ads, yellow pages ads, brochures, flyers, sponsorship materials and signs, billboards, stadium/arena signs, automobile signs, bus advertising, business cards, or promotional material of any sort. In the case of radio and audio only advertising, the name of the related brokerage must be clearly stated. The Council is also aware that, in some circumstances, sellers are placing advertisements of their properties for sale and including the listing licensee's name and contact information, often without the knowledge of the licensee. It is therefore suggested that licensees remind their sellers of the Council's requirement for licensees to display their related brokerage name in a prominent and easily readable way in



A brokerage's name displayed in tiny and hard to read font sizes at the bottom of an advertisement is not acceptable.

all advertisements. In assessing compliance with section 4-6(2) of the Council Rules, the Council will give consideration to the prominence of the brokerage's name in relation to the rest of the advertisement and the relative ease with which a consumer can determine who the brokerage is.

Licensees are ultimately responsible for all of their advertising and must proofread any advertisement to ensure it complies with the Council Rules. It is not acceptable to supply information to a newspaper or other periodical without proofreading the final advertisement. Your cooperation in ensuring all advertising meets the requirements of the Council Rules is appreciated. ■

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- Non-Resident Withholding Tax

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- New Brokerage Standards Manual
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A Note from the Chair



Judi A. Whyte, RI
Chair

As 2009 gets underway, I thought licensees might be interested in knowing that the Council has received approximately 110 applications for personal real estate corporations. This relatively low number is likely due in large part to the current market conditions. For those licensees interested in licensing a personal real estate corporation, further information, including a guidelines booklet, is available on the main page of the Council's website.

Speaking of market conditions, since we reached an all-time high number of licensees in August of last year (20,391), the number of licensees in the province has decreased by approximately 700 to just under 19,600. In addition to the decreasing numbers of licensees, the number of students taking the licensing courses has also dropped off dramatically and, in the case of the Trading Services Licensing Course, the reduction in enrollments is more than 50% when compared with last year. As a result of the real and

anticipated decline in the number of licensees, the Council will be reviewing both licensing assessments and expenses when reviewing its budget in March for Council's next fiscal year commencing July 1, 2009.

Licensees will note that this Report contains a number of articles, as well as a number of disciplinary sanctions, relating to agency relationships. Agency and, in particular, dual agency is the source of a large number of complaints at the Council office. The Council reminds licensees to always know who their client is and to ensure that licensees put the interests of their principal ahead of all others. This is important at all times, but licensees need to be particularly aware of this in a difficult real estate market.

On behalf of the Council,

Judi Whyte, RI
Chair

Reminder About Accurate Information on Licensing Forms

Before mailing or faxing forms to the Council, please check them for accuracy, completeness and proper signatures. Incomplete or inaccurate applications submitted to the Council can cause processing delays. In addition to checking the forms for completeness, licensees must also check to ensure that they have checked off all the appropriate service categories (e.g. Trading, Rental, Strata).

The Council recently encountered a situation where a licensee who had the required education to provide both trading and rental property management services, only checked the rental property management services box on the application form. It was later discovered that the licensee had been actively engaged in providing trading services when he was, in fact, only licensed to provide rental property management services. ■

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STATISTICS

February 2009

Representatives: 16,377
Associate Brokers: 1,772
Managing Brokers: 1,370
Brokerages: 1,416

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:
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Agency Update

In September 2007, the British Columbia Real Estate Association (BCREA) and the Real Estate Council struck a joint task force to consider issues related to agency practice. The mandate of this task force included:

- commissioning, then reviewing the results of, an independent survey of licensees with respect to their understanding of agency issues,
- reviewing the recommendations of the Canadian Regulators Group* Agency Task Force, and evaluating input received from BC real estate boards and associations related to these recommendations,
- assessing feedback received from licensees who have taken the *What Brokerages and Realtors® Need to Know About Agency* course,

- reviewing current 'standard' service agreements and disclosure forms to determine if they accurately represent practice, and
- developing short and long term strategies for improving agency practice.

The joint task force reported, on all but the last point above, to a joint meeting of the BCREA Board of Directors, Board Presidents and Executive Officers, and Council members in September 2008. That report contained a number of recommendations that are currently being considered by the province's real estate boards, as well as the Council. Once their feedback has been received, likely by the middle of February 2009, the joint task force will begin the development of short and long term strategies for improving agency practice. ■

* The Canadian Regulators Group is an affiliation of the organizations that regulate real estate across Canada.

Agency Obligations When Co-Listing

The Council was recently asked to comment on the following scenario:

ABC Realty Ltd. is a small brokerage with only one licensee: Ms. Brown. They enter into a 'standard' Multiple Listing Contract with Mr. Seller for the sale of his home. Ms. Brown is to go on vacation during the term of the listing. When the home has not been sold as Ms. Brown's vacation approaches, Mr. Seller and ABC Realty Ltd. agree that a co-listing agreement should be entered into with another brokerage so that marketing efforts would continue during Ms. Brown's vacation. A listing amendment is created adding XYZ Realty Ltd. as a co-listing agent. There is nothing in the amendment to suggest that XYZ Realty Ltd.'s obligations are in any way different than the obligations of the original listing brokerage, ABC Realty Ltd. During Ms. Brown's vacation, a licensee engaged by XYZ Realty Ltd. finds a buyer who is interested in making an offer to purchase Mr. Seller's home.

What is the agency status of ABC Realty Ltd. and XYZ Realty Ltd. in this situation?

Paragraph 10 of the 'standard' Multiple Listing Contract states, in part, that: "If

the Listing Brokerage is also the agent of a prospective buyer who becomes interested in the Property, the Listing Brokerage will seek the written consent of the Seller and the prospective buyer to continue to act as their limited dual agent to facilitate a sale of the Property."

Unless the listing amendment has expressly created different obligations, where two brokerages co-list a property for sale, they are acting in concert in marketing the property and would jointly owe all fiduciary and other obligations to the seller. It follows, then, that if one brokerage enters into a limited dual agency relationship with the seller and a buyer, the other brokerage should also be seen as being in limited dual agency.

To suggest otherwise would be to view the relationship of the two brokerages as simply being the equivalent of "cooperating" brokerages—a relationship already permitted under clause 4 of the 'standard' Multiple Listing Contract—and this arrangement would require no amendment to that contract. But the brokerages and the seller wished to create a closer relation-



ship than this; they wished XYZ Realty Ltd. to market the property for sale during Ms. Brown's vacation. The two brokerages jointly agreed to act in concert representing the seller as their client, and this was reflected in the listing amendment.

One might ask whether, through the listing amendment, XYZ Realty Ltd. was being appointed as a "sub-agent" of ABC Realty Ltd., even though that term was not used in the amendment. The result would likely be the same as the initial agent and the sub-agent would owe the same duties to the seller. ■

Disclosure of Material Latent Defects and Agency Obligations

The Council was recently provided with the following scenario concerning disclosure of a material latent defect, and asked what the correct course of action would be for the licensee.

Scenario

A seller has listed a property with a licensee and the seller advises the licensee that there is a material latent defect affecting the property. The seller instructs the licensee not to disclose the latent defect to any potential buyer.

The licensee advises the seller of his obligation to disclose a material latent defect under section 5-13 of the Council Rules and that, pursuant to section 3-3(1)(b) of the Council Rules, he can only act in accordance with the lawful instructions of the client. The licensee subsequently withdraws from his agency relationship with the seller as the seller refuses to change his instructions in this regard.

Sometime later, the said licensee is approached by a potential buyer who is interested in buying the same property and wants the licensee to become their buyer's agent to do so.

Can the licensee disclose this material latent defect to the buyer?

Licensees who withdraw services in this manner acknowledge that their professional obligations can override unreasonable client instructions, which is consistent with the requirements of section 5-13 (3) of the Council Rules.

The answer to the question is “No”. A licensee’s responsibility to maintain their client’s confidentiality continues beyond the termination of an agency relationship. The least risky course of action for the licensee may be to not represent this potential buyer; however, if the licensee wishes to provide agency representation, he would first have to advise the buyer that he

- had previously represented the seller and that he cannot disclose confidential information obtained in that earlier relationship concerning such matters as:
 - seller’s motivation for selling,
 - personal information concerning the seller, or
 - the condition of the property;
- can only represent the potential buyer on the understanding that he will not disclose any such information.



Essentially, the licensee must place the buyer in the position to make a fully informed decision as to whether the buyer wishes to be represented by the licensee in such circumstances.

The difficulty of reconciling the ongoing obligation of retaining a former client’s confidentiality with the obligation of full disclosure to a current client can be problematic. Licensees who face situations such as this should consult with their managing brokers, and consider obtaining independent legal advice before acting in a way that could expose them to a claim for breach of duty. ■

Additional Brokerage Services

Rental property management and strata management service relationships are typically long term. When special projects arise, brokerages will often agree to provide services that are in addition to those identified in the original written service agreement. For example, a strata corporation client may ask its strata management brokerage to oversee a substantial remediation project. The brokerage may agree to do so on the understanding it will receive remuneration in addition to that established in the original service agreement.

Section 5-1(6) of the Council Rules requires that any amendment of or addition to the terms of a service agreement must be in writing and be signed by the client and an authorized signatory of the brokerage. When either amending or add-

ing to the service agreement, particular attention should be paid to establishing

- what additional services are to be provided by the brokerage, when the brokerage will begin providing the additional services, and for how long they will be provided;

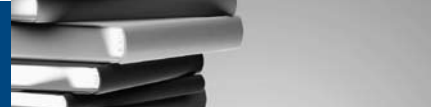
Any amendment must be in writing and be signed by the client and an authorized signatory of the brokerage.

- any additional remuneration to be paid and the circumstances in which it will be payable; and
- any additional scope of authority of the brokerage to act on behalf of the client,

particularly related to signing cheques, making disbursements, and entering into contracts.

With respect to the second bullet above, brokerages should be aware that section 5-15(4) of the Council Rules establishes when money held in a brokerage trust account that is intended as remuneration is considered earned for the purpose of authorizing withdrawal from trust. That section states that such remuneration may be withdrawn in accordance with the service agreement or other agreement under which the applicable real estate services are provided, or at a time otherwise agreed to in writing by the client.

Both of these circumstances underscore the necessity of having written authority to withdraw remuneration. ■



Relicensing Education Program Requirements for Second Cycle—2009–2010

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

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

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

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

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

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

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

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

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

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

One elective course

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

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

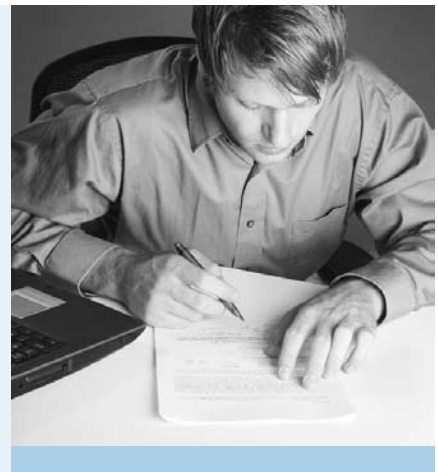
Warning About False Applications

Since January 1, 2009, applicants for licence renewal have been required to certify that they have completed the Council's Relicensing Education Program (REP) course requirements. Over the past few weeks, the Council has noticed that some licence applicants have signed the licence renewal form certifying that they have completed the REP requirements when, in fact, they had not, and that some managing brokers have signed the renewal form without ascertaining whether the licence applicant has completed the required REP courses.

It is important to note that the Application for Licence Renewal form has been amended to include a certification of completion of REP courses. The Council reminds licensees that

it is the joint responsibility of both the licence applicant and managing broker to ensure that the renewal form is true and complete, including the completion of REP courses. If a renewal form is submitted to the Council office, and it is later determined that the REP course requirements have not been completed, the renewal application would be considered to be a false application. This would have serious ramifications for the licence applicant, including whether or not they are suitable for continued licensing.

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 applicant is of good reputation and is suitable for licensing (including the completion of REP requirements), and thereby approves the application.



The Council appreciates the diligence of managing brokers in ensuring that the licensees engaged with their brokerage have completed the REP course requirements prior to licence renewal. Should you require any further information with respect to REP, please visit the Council's website at www.recbc.ca or contact the Council at 604-683-9664 or toll-free 1-877-683-9664. ■

Licensees Must Give Notice of Discipline, Bankruptcy, Criminal Proceedings

The Council again 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;
- (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.

Licensees must not wait for either licence renewal or licence transfer to report this information to the Council. ■

All Licensees are Engaged by a Brokerage

The Council is aware that some licensees who hold a licence to provide two or more services (e.g. trading services and rental property management services) mistakenly believe that they may provide rental management services (or strata management services, as the case may be) independent of their related brokerage. In addition, some licensees mistakenly believe that, because they hold a higher level of licence (i.e. associate broker or

managing broker level), they may provide real estate services outside of their related brokerage.

The Council reminds all licensees that section 7(3) of the *Real Estate Services Act* states that:

- (3) A managing broker, associate broker or representative
- (a) must not provide real estate services other than on behalf of the broker-

age in relation to which they are licensed, and

- (b) is not entitled to and must not accept remuneration in relation to real estate services from any person other than the brokerage in relation to which they are licensed.

Licensees with questions are asked to contact the Council office at 604-683-9664, toll-free 1-877-683-9664 or email info@recbc.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 the gross amount. To do this, a non-resident has to complete a Form NR6. 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 are also reminded that, upon the sale of a non-resident owned property, it is essential that the licensee informs the conveyancing lawyer/notary, who then will obtain a clearance certificate from CRA. Again, the non-resident

withholding tax is 25% of the sale price.

Licensees dealing with non-resident sellers and rental property owners should familiarize themselves with the requirements of the Non-Resident Withholding Tax Guide available on the Government of Canada website at www.cra-arc.gc.ca/E/pub/tg/t4061/t4061-06e.pdf. Licensees should also advise their non-resident clients to obtain professional advice. ■

CRF Loans Require Authorization

Brokerage, licensees must act within strict guidelines

Questions have been raised by brokerages providing strata management services whether the borrowing of funds or making “loans” from a strata corporation’s Contingency Reserve Funds [CRF] (or from any other strata corporation trust account) requires express authorization from the strata corporation prior to doing so.

Section 3-3(1) of the Council Rules (see below), specifically items (1)(b) and (c), stipulates that a brokerage and its related licensees, when providing strata management services to or on behalf of a strata corporation client, must act in accordance with the lawful instructions of the strata corporation (which are provided through its elected strata council) and only within the scope of the authority given by the strata corporation.

Duties to Clients

3-3 (1) Subject to subsection (2), if a client engages a brokerage to provide real estate services to or on behalf of the client, the brokerage and its related licensees must do all of the following:

- (a) act in the best interests of the client;*
- (b) act in accordance with the lawful instructions of the client;*
- (c) act only within the scope of the authority given by the client;*

- (d) advise the client to seek independent professional advice on matters outside of the expertise of the licensee;*
- (e) maintain the confidentiality of information respecting the client;*
- (f) without limiting the requirements of Division 2 [Disclosures] of Part 5 [Relationships with Principals and Par-*

- (i) take reasonable steps to avoid any conflict of interest;*
- (j) without limiting the requirements of Division 2 [Disclosures] of Part 5 [Relationships with Principals and Parties], if a conflict of interest does exist, promptly and fully disclose the conflict to the client.*
- (2) By agreement between the brokerage and the client, one or more of the duties under subsection (1) may be modified or made inapplicable.*

Making “loans” from Contingency Reserve Fund or transferring funds between trust accounts requires express authorization from the strata corporation.

ties], disclose to the client all known material information respecting the real estate services, and the real estate and the trade in real estate to which the services relate;

- (g) communicate all offers to the client in a timely, objective and unbiased manner;*
- (h) use reasonable efforts to discover relevant facts respecting any real estate that the client is considering acquiring;*

Section 30(1)(g) of the *Real Estate Services Act* (see below) allows a brokerage, based on a strata corporation client’s instructions, to withdraw funds from a trust account maintained on behalf of that strata corporation.

Withdrawals from trust account

30 (1) Money in a brokerage trust account, other than money that the brokerage holds as stakeholder, may be withdrawn only if it is one or more of the following:

- (a) money paid into the trust account by mistake;*
- (b) interest paid in accordance with section 29 [interest on trust account];*
- (c) money authorized to be withdrawn under section 31 [payment of licensee]*

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Fees for Obtaining Strata Corporation Documents

A recent article in the *The Province* newspaper raised the issue of fees charged by strata corporations, or their strata management agents, to provide certain documents to strata lot sellers or buyers for the purposes of transaction closings.

The two documents most commonly requested for the purpose of a strata lot sale are a Form F Payment Certificate, which ensures that the seller does not owe any money to the strata corporation prior to transferring title, and a Form B Information Certificate, which provides information about matters that affect the strata lot itself, as well as the operation of the strata corporation.

The *Strata Property Act* establishes modest amounts that may be charged by either a strata corporation or their agent for providing documents. In the case of a Form F, \$15 plus 25 cents/page may be charged. In the case of a Form B, \$35 plus 25 cents/page may be charged.

These amounts are the maximum amount that may be charged if the required notice period has been provided to the strata or their agent. However, if the person requesting these documents wishes to receive them sooner than the notice period, which, depending on the nature of the documents, may be effectively 8 days or 15 days, a premium may be charged. This premium is sometimes referred to as a ‘rush fee’.

The *Strata Property Act* does not restrict the amount that may be charged to meet these rush requests. In practice, if sufficient notice has not been provided, either to the strata corporation or their agent, the charges can be significantly higher than the prescribed amount.

Licensees should alert their seller/buyer clients concerning these additional charges if documents are not requested sufficiently in advance of being needed.

For extensive information regarding strata corporation records, and access to them, please refer to pages 176–203 of the Licensee Practice Manual, 6th Edition. ■

New Brokerage Standards Manual

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

The *Brokerage Standards Manual* replaces the former *Office Practice Manual* and *Corporate Office Manual*. If brokerages still have copies of either of the latter manuals, they should be recycled as the information is now out of date.

The *Brokerage Standards Manual* was developed with the participation of several real estate licensees and has been thoroughly reviewed by an editorial committee. The Council is appreciative of licensee suggestions and comments and would welcome any further input licensees may have to improve the *Brokerage Standards Manual*. Suggestions may be forwarded to the Council office at info@recbc.ca. ■



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

CRF Loans Require Authorization, cont'd

> Continued from page 7
remuneration];

- (d) *unclaimed money transferred under section 32 [unclaimed money held in trust];*
- (e) *money paid into court under section 33 [payment of trust funds into court];*
- (f) *money paid in accordance with a court order;*
- (g) *money paid to or in accordance with the instructions of the principal to whose credit the money was deposited.*

In conjunction with the above, the Council Rules require that:

1. a brokerage providing strata management services must establish in its service agreement, the brokerage's scope of authority to sign cheques and make disbursements on behalf of its strata corporation clients [section 5-1(5.1)(c)(i)], and
2. the service agreement must include a brokerage's authority to transfer amounts between brokerage trust accounts maintained for the strata corporation under section 7-9(2) of the Council Rules [section 5-1(5.1)(b)(i)].

The Council, when investigating complaints or conducting an audit regard-

ing a brokerage, will look at service agreements to determine a brokerage's scope of authority relative to withdrawals from or transfers between trust accounts.

There may be many different scenarios for which the borrowing or transferring of funds from one trust account to another may be required. One example is where a strata corporation has cash flow problems in its Operating Fund and requires a "loan" from its Contingency Reserve Fund [CRF]. Another example is where a strata corporation has a cash shortfall in a special levy account created by either unanticipated expenditures or unforeseen 'extras' which exceed the original levy budget, or due to unpaid special levies on the part of some strata lot owners. The strata manager would be acting outside of his/her scope of authority to unilaterally transfer or "loan" such funds from the CRF trust account to an Operating or Special Levy trust account in the absence of express authorization to make such a transfer or "loan".

It is, therefore, important for a strata manager and the brokerage to assess each situation carefully before proceeding with making such "loans" from or

transferring trust funds between trust accounts. For those situations where the scope of authority is not established within the service agreement, the brokerage should obtain the express authority of their strata corporation clients, in the form of a separate written direction that clearly establishes the authority for the specific circumstance. Without the authority to "loan" or transfer funds, a strata manager may incur substantial risk and liability, as well as be subject to discipline under the Council Rules.

If there is uncertainty whether the authority provided for within a service agreement is sufficient, it is good business practice for a strata manager and the brokerage to minimize their risk and liability by obtaining a separate written direction that provides authority from the strata corporation client to make a "loan" from or transfer funds between trust accounts.

A brokerage should ensure that any parameters respecting its scope of authority to act on behalf of a strata corporation are either clearly established within its service agreement or provided by the strata corporation client, through its elected strata council. ■

Disciplinary Decisions

Since the December 2008 *Report from Council* newsletter, the following actions have been taken as a result of disciplinary hearings and Consent Orders conducted by the Council.

COMPLAINT: Contravention of sections 35(1)(a) [professional misconduct] and 7(3)(a) and (b) [relationships between brokerages and other licensees] of the *Real Estate Services Act* and sections 3-3(1)(a) [duties to clients], 3-3(1)(i) [avoid a conflict of interest], and 3-3(1)(j) [disclose conflict of interest to client] of the Council Rules

ISSUE: Azeem Abdulrasul Hassanali, representative, West Coast Realty Ltd. dba Sutton Group West Coast Realty, North Vancouver, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he: (a) failed to act in the best interests of his clients, as required by section 3-3(1)(a) of the Council Rules, when he acted as a limited dual agent for the buyer and seller, as well as a leasing agent and a property manager for Metro Plaza for the seller, and a dispute arose between the parties which placed Mr. Hassanali in a conflict of interest; (b) failed to take reasonable steps to avoid a conflict of interest, as required by section 3-3(1)(i) of the Council Rules, when he acted as a limited dual agent, a leasing agent and a property manager for the Property; (c) as required by section 3-3(1)(j) of the Council Rules, failed to disclose to his clients promptly that a conflict of interest existed when he acted as a limited dual agent; and (d) contrary to sections 7(3)(a) and 7(3)(b) of the *Real Estate Services Act*, offered real estate services relating to Metro Plaza and accepted remuneration for same outside of his brokerage, and specifically in relation to: (i) the lease renewal of a tenant in January 2006 in which Mr. Hassanali received funds directly from the client; (ii) property management services per an Agreement dated March 25, 2005 between Mr. Hassanali and the client, Pacific United Ltd. in which the brokerage was not named as a party.

PENALTY: Azeem Abdulrasul Hassanali was suspended for one year from January 14, 2009 to January 13, 2010 (inclusive) for professional misconduct as described above. In addition, he was ordered to successfully complete the disciplinary education assignment applicable to Chapter 2 (The *Real Estate Services Act*), Chapter 5 (The Professional Liability of Real Estate Licensees), Chapter 9 (Professional Ethics), and Chapter 12 (Law of Agency) of the Real Estate Trading Services Licensing Course, Unit 1 “Agency Disclosure, Privacy and the Realtor Code” and Unit 10 “Legal and Ethical Issues” of the British Columbia Real Estate Association Residential Trading Services Applied Practice Course; enrol in and attend the first available CPE course “Professionalism it Pays! Be Safe or Be Sued” or “Ethics: Unlocking the Realtor Code”, and pay enforcement expenses to the Council in the amount of \$6,128.00.

COMPLAINT: Contravention of section 35(1)(a) [professional misconduct] of the *Real Estate Services Act*, and sections 3-3(1)(i) and (j) [conflict of interest], 3-4 [duty to act honestly], 5-8 and 5-10 [material change in agency representation] of the Council Rules

ISSUE: Khiem Robert Lawlor, representative, Century 21 Bob Sutton Realty (P.G.) Ltd., Prince George, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he: (a) contravened section 3-4 of the Council Rules by representing to or leading a prospective buyer to believe that the highest offer had been accepted by the Court, when he knew or ought to have known this to be untrue or misleading; and (b) contravened sections 3-3(1)(i), 3-3(1)(j), 5-8 and 5-10 of the Council Rules by failing to obtain consent of the first buyer to represent the second buyer prior to writing the offer on behalf of the second buyer.

RESULT: Khiem Robert Lawlor was suspended for forty-five (45) days from February 25, 2009 to April 10, 2009 (inclusive) for professional misconduct as described above after an Agreed Statement of Facts,

Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Khiem Robert Lawlor, and a Consent Order was issued. Further, Khiem Robert Lawlor was ordered to successfully complete the disciplinary assignments applicable to Chapter 2 (The *Real Estate Services Act*) and Chapter 9 (Professional Ethics) of the Real Estate Trading Services Licensing Course, to enrol in and attend the next available Unit 1 “Agency Disclosure, Privacy and the Code of Ethics” of the Residential Trading Services Applied Practice Course, and to pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of sections 35(1)(a) [professional misconduct], 35(1)(d) [incompetence], 6(2) [managing broker responsibilities] of the *Real Estate Services Act*, and sections 3-1 [managing broker responsibilities], 3-2 [associate broker and representative responsibilities], 3-3(1)(h) [use effort to discover relevant facts], 3-4 [duty to act with reasonable care and skill], 4-5(2) [licensee name must be indicated], 4-7 [false or misleading advertising], and 5-11 [disclosure of remuneration] of the Council Rules

ISSUE: William Edward Soo, representative, West Coast Realty Ltd. (Brdwy) dba Sutton Group – West Coast Realty (Brdwy), Vancouver, 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 35(1)(d) of the *Real Estate Services Act* in that he failed to ensure that the information advertised on the Multiple Listing Services, regarding the square footage of the Property, was accurate; (b) contravened sections 3-4, 4-7 and 3-3(1)(h) of the Council Rules, in that he advertised on the Multiple Listing Service, the square footage of the Property as being 590 square feet when he knew or ought to have known that the square footage of the Property was approximately 410 square feet; (c) contravened section 35(1)(d) of the *Real Estate Services Act* and section 3-4 of the Council Rules, in that he failed to ensure that the Complainant had the legal authority to sign the Contract of

Disciplinary Decisions, *cont'd*

Purchase and Sale on behalf of the buyer; (d) contravened sections 3-2(1) and 3-2(2) of the Council Rules, in that he failed to promptly provide the managing broker with a copy of the Contract of Purchase and Sale; (e) contravened sections 3-2(1) and 3-2(2) of the Council Rules, in that he failed to promptly advise the managing broker that the deposit was late; (f) contravened section 4-5(2) of the Council Rules, in that he failed to list the correct name of his brokerage on the Contract of Purchase and Sale; and (g) contravened section 5-11 of the Council Rules, in that he failed to disclose to his clients, his remuneration as a result of providing real estate services.

ISSUE: Victor Jang, managing broker, West Coast Realty Ltd. (Brdwy) dba Sutton Group – West Coast Realty (Brdwy), Vancouver, committed professional misconduct within the meaning of section 35(1)(a) and 35(1)(d) of the *Real Estate Services Act* by contravening sections 3-1(4)(a) and 3-1(5) of the Council Rules in that he failed to ensure that the seller was immediately notified in writing that the deposit that was contemplated in the Contract of Purchase and Sale had not been received upon removal of the subjects, in accordance with his duties as a managing broker under section 6(2) of the *Real Estate Services Act* and section 3-1 of the Council Rules.

RESULT: William Edward Soo was suspended for twenty-one (21) days from February 25, 2009 to March 17, 2009 (inclusive) for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and William Edward Soo, and a Consent Order was issued. Further, William Edward Soo was ordered to successfully complete the disciplinary assignment applicable to Chapter 10 (The Law of Contract) of the Real Estate Trading Services Licensing Course, to enrol in and attend the first available CPE course “Contracts: Keep on Top of Changes”. Further, William Edward Soo and Victor Jang were ordered to be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,000.00.

RESULT: Victor Jang was reprimanded for professional misconduct as described

above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Victor Jang, and a Consent Order was issued. Further, Victor Jang and William Edward Soo were ordered to be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,000.00.

COMPLAINT: Contravention of section 35(1)(a) [professional misconduct] of the *Real Estate Services Act*, and sections 3-3(1)(a), (f) and (h) [duties to clients], 3-4 [duty to act with reasonable care and skill], 4-7 [false or misleading advertising], 5-10 [disclosure] and 5-11 [disclosure of remuneration] of the Council Rules

ISSUE: Gloria Marie Andrews, representative, Medallion Realty Ltd. dba Sutton Group Medallion Realty, Surrey, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that she, as the limited dual agent in the purchase and sale of property on East Georgia Street, Vancouver, pursuant to a February 11, 2007 contract from the Estate of S.L. (“Seller”) to A.K. and E.D. and their assignees (collectively referred to as the “Buyers”): (a) failed to fully clarify the nature of the representation that she would be providing, including having the Buyers sign a Limited Dual Agency Agreement, particularly as she was acting as a limited dual agent, in accordance with section 5-10 of the Council Rules; (b) failed to ascertain material facts about the property and failed to disclose them to the Buyers prior to the Buyers’ execution of the Contract, including accurate zoning, area, and property tax information, and financing implications as a result of the property being classified by lending institutions as a commercial property rather than a residential property, in accordance with her duties under sections 3-3(1)(a), (f) and (h) and 3-4 of the Council Rules; (c) published advertising that she knew or ought to have known contained false statements or misrepresentations concerning the subject property, contrary to section 4-7 of the Council Rules; (d) failed to disclose in writing to the Buyers, the remuneration she anticipated receiving for providing real estate services, in accordance with

section 5-11 of the Council Rules; and (e) failed to draft the subject to financing clause with sufficient clarity including the term, principal sum, and interest rate of the mortgage, in accordance with section 3-3(1)(a) and section 3-4 of the Council Rules.

RESULT: Gloria Marie Andrews was suspended for fourteen (14) days from February 25, 2009 to March 10, 2009 (inclusive) for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Gloria Marie Andrews, and a Consent Order was issued. Further, Gloria Marie Andrews was ordered to pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of section 35(1)(a) [professional misconduct] of the *Real Estate Services Act* and sections 3-3(1)(i) [duties to clients] and 3-4 [duty to act with reasonable care and skill] of the Council Rules

ISSUE: Balbir Singh Gellon, representative, Medallion Realty Ltd. dba Sutton Group Medallion Realty, Surrey, committed professional misconduct under section 35(1)(a) of the *Real Estate Services Act*, in that he: (a) contravened section 3-3(1)(i) of the Council Rules by failing to take all reasonable steps to avoid a conflict of interest in circumstances where the said licensee acted as limited dual agent for the sellers (who were his daughter and son-in-law) and the buyers, in that he failed to properly advise the buyers to seek independent advice with respect to: (i) his representation as limited dual agent; (ii) the property inspection report obtained by the buyers which revealed a number of defects in the Property; and, (iii) the completion of the purchase of the Property when the sellers refused to amend the Contract of Purchase and Sale to make it a condition for the benefit of the buyers that the required repairs to the Property be completed prior to completion of the purchase; and (b) contravened section 3-4 of the Council Rules by failing to act with reasonable skill when he failed to seek on behalf of the buyers an extension of the subject removal date with respect to the

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Property to allow the buyers time to verify that all repairs to the Property had been conducted in a satisfactory manner.

RESULT: Balbir Singh Gellon was suspended for fourteen (14) days from November 12, 2008 to November 25, 2008 (inclusive) for professional misconduct as described above. In addition, Balbir Singh Gellon was required to successfully complete the disciplinary education assignments applicable to Chapter 10 (The Law of Contract), Chapter 11 (Contracts for Real Estate Transactions) and Chapter 12 (Law of Agency) of the Real Estate Trading Services Licensing Course, and to enrol in and attend the first available CPE course "What Brokerages and Realtors® Need to Know About Agency". By Supplemental Decision, Balbir Singh Gellon was ordered to pay enforcement expenses to the Council in the amount of \$6,424.00.

COMPLAINT: Contravention of sections 35(1) [professional misconduct], and 35(1)(a) [contravention of Act, Regulations or Council Rules] of the *Real Estate Services Act*, and sections 5-9(5)(g) [disclosure of interest in trade] and 5-9(6)(a)(i) [disclosure of interest in trade] of the Council Rules

ISSUE: Trevor Howard Barnett, representative, Macdonald Realty Ltd. dba Macdonald Realty Westmar, Richmond, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening section 5-9(6)(a)(i) of the Council Rules in that Mr. Barnett, in connection with the sale of the Property from the seller to the buyers by the Contract, failed to include the amount of any commission or other remuneration he was expecting to receive on the disclosure form before he presented the disclosure form to the seller; and (b) by contravening section 5-9(5)(g) of the Council Rules in that Mr. Barnett, in connection with the sale of the Property from the seller to the buyers by the Contract, failed to ensure that his signature in Part D of the disclosure form was witnessed before he presented the disclosure form to the seller.

RESULT: Trevor Howard Barnett was suspended for seven (7) days from December 17, 2008 to December 23, 2008

(inclusive) for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Trevor Howard Barnett, and a Consent Order was issued. Further, Trevor Howard Barnett was ordered to apologize in writing to the seller for the disruption of her affairs associated with the dispute regarding the commission Mr. Barnett claimed unsuccessfully in connection with his purchase of the seller's residential property. Trevor Howard Barnett was also ordered to successfully complete the disciplinary assignment applicable to Chapter 9 (Professional Ethics) of the Real Estate Trading Services Licensing Course, and to pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of sections 35(1)(a) [professional misconduct] and 6(2)(b) [managing broker responsibilities] of the *Real Estate Services Act*, sections 3-1(1)(a) and (b) 3-1(3) [managing broker responsibilities] and 7-7(1)(b) [failure to file Accountant's Report] of the Council Rules

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

ISSUE: Mona Radelet, managing broker, Highland West Properties Ltd., Vancouver, 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 section 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: Highland West Properties Ltd. was reprimanded for the contravention described above after an Agreed State-

ment of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Highland West Properties Ltd., and a Consent Order was issued. Further, Highland West Properties Ltd. and Mona Radelet were jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,000.00.

RESULT: Mona Radelet was reprimanded for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Mona Radelet, and a Consent Order was issued. Further, Mona Radelet and Highland West Properties Ltd. were jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,000.00.

COMPLAINT: Contravention of sections 35(1)(a) [professional misconduct] and 6(2)(b) [managing broker responsibilities] of the *Real Estate Services Act*, sections 3-1(1)(a) and (b) 3-1(3) [managing broker responsibilities] and 7-7(1)(b) [failure to file Accountant's Report] of the Council Rules

ISSUE: Century 21 Community Realty Ltd., Surrey, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening section 7-7(1)(b) of the Council Rules in that it failed to file an Accountant's Report with the Council by the prescribed date.

ISSUE: Roger Bruce Schoen, managing broker, Century 21 Community Realty Ltd., Surrey, 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: Century 21 Community Realty Ltd. was reprimanded for the contra-

vention described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Century 21 Community Realty Ltd., and a Consent Order was issued. Further, Century 21 Community Realty Ltd. and Roger Bruce Schoen were jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,000.00.

RESULT: Roger Bruce Schoen was reprimanded for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Roger Bruce Schoen, and a Consent Order was issued. Further, Roger Bruce Schoen and Century 21 Community Realty Ltd. were jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,000.00.

COMPLAINT: Contravention of sections 35(1)(a) [professional misconduct] and 6(2)(b) [managing broker responsibilities] of the *Real Estate Services Act*, sections 3-1(1)(a) and (b) 3-1(3) [managing broker responsibilities] and 7-7(1)(b) [failure to file Accountant's Report] of the Council Rules

ISSUE: Macdonald Realtors Lorne Goldman Ltd., Vancouver, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening section 7-7(1)(b) of the Council Rules in that it failed to file an Accountant's Report with the Council by the prescribed date.

ISSUE: Richard William Long, managing broker, Macdonald Realtors Lorne Goldman Ltd., Vancouver, 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: Macdonald Realtors Lorne Goldman Ltd. was reprimanded for the contravention described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Macdonald Realtors Lorne Goldman Ltd., and a Consent Order was issued. Further, Macdonald Realtors Lorne Goldman Ltd. and Richard William Long were jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,000.00.

RESULT: Richard William Long was reprimanded for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Richard William Long, and a Consent Order was issued. Further, Richard William Long and Macdonald Realtors Lorne Goldman Ltd. were jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,000.00.

COMPLAINT: Contravention of sections 35(1)(a) [professional misconduct] and 6(2)(b) [managing broker responsibilities] of the *Real Estate Services Act*, and sections 3-1(1)(a) and (b), 3-1(3) [managing broker responsibilities] and 7-7(1)(b) [failure to file Accountant's Report] of the Council Rules

ISSUE: BMAX BC Solutions Inc., Vancouver, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening section 7-7(1)(b) of the Council Rules in that it failed to file an Accountant's Report with the Council by the prescribed date.

ISSUE: Barry Austin McKay, managing broker, BMAX BC Solutions Inc., Vancouver, 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: BMAX BC Solutions Inc. was reprimanded for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and BMAX BC Solutions Inc., and a Consent Order was issued. Further, BMAX BC Solutions Inc. and Barry Austin McKay are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,000.00.

RESULT: Barry Austin McKay was reprimanded for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Barry Austin McKay, and a Consent Order was issued. Further, Barry Austin McKay and BMAX BC Solutions Inc. are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,000.00.

COMPLAINT: Contravention of sections 35(1)(a) [professional misconduct], 6(2)(c) [brokerage must have managing broker], 7(3)(a) and 7(3)(b) [relationships between brokerages and other licensees] of the *Real Estate Services Act*, and sections 3-1 [managing broker responsibilities], 3-2(1)(c) [associate broker and representative responsibilities], 5-1 [written service agreements], and 5-9(3) [disclosure of interest in trade] of the Council Rules

ISSUE: Kippy Karnal Smith, representative, TRG The Residential Group Realty Ltd. dba TRG The Residential Group Realty, Vancouver, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he: (a) provided rental property management services separate from the brokerage with which he was licensed, contrary to section 7(3)(a) of the *Real Estate Services Act*; (b) accepted remuneration in relation to rental property management services directly from persons other than his brokerage, contrary to section 7(3)(b) of the *Real Estate Services Act*; (c) permitted an unlicensed individual to engage in activities for which a licence is required relating to rental property management services;

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and (d) failed to promptly provide to the brokerage all records, as required by section 3-2(1)(c) of the Council Rules.

ISSUE: Lawrence Alan Johnson, representative, TRG The Residential Group Realty Ltd. dba TRG The Residential Group Realty, Vancouver, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he: (a) provided rental property management services separate from the brokerage with which he was licensed, contrary to section 7(3) (a) of the *Real Estate Services Act*; (b) accepted remuneration in relation to rental property management services directly from persons other than his brokerage, in contravention of section 7(3)(b) of the *Real Estate Services Act*; (c) failed to disclose an interest in trade as required by section 5-9(3) of the Council Rules; and (d) failed to promptly provide to the brokerage all records, as required by section 3-2(1)(c) of the Council Rules.

ISSUE: Richard Thomas Valouche, managing broker, TRG The Residential Group Realty Ltd. dba TRG The Residential Group Realty, Vancouver, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he: (a) failed to be in control and conduct of the brokerage's real estate business, including supervision of the associate brokers and representatives who are licensed in relation to the brokerage, in contravention of section 6(2)(c) of the *Real Estate Services Act*; (b) failed to ensure that all rental property management agreements were in the name of the brokerage, contrary to section 5-1 of the Council Rules; and (c) ensured that the said business of the brokerage was carried out competently and in accordance with the Act, Regulation, Rules and/or Bylaws; in accordance with section 6(2) of the Act and section 3-1 of the Council Rules.

RESULT: Kippy Karnal Smith was reprimanded for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Kippy Karnal Smith, and a Consent Order was

issued. Kippy Karnal Smith was ordered to pay a discipline penalty to the Council in the amount of \$2,000.00, to successfully complete the disciplinary education assignments applicable to Chapter 2 (*The Real Estate Services Act*) of the Real Estate Trading Services Licensing Course, enrol in and attend the first available "Real Estate E&O Insurance Legal Update 2008" course. Further, Kippy Karnal Smith, Lawrence Alan Johnson and Richard Thomas Valouche were ordered to be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,000.00.

RESULT: Lawrence Alan Johnson was reprimanded for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Lawrence Alan Johnson, and a Consent Order was issued. Lawrence Alan Johnson was ordered to pay a discipline penalty to the Council in the amount of \$2,000.00, to successfully complete the disciplinary education assignments applicable to Chapter 2 (*The Real Estate Services Act*) of the Real Estate Trading Services Licensing Course, enrol in and attend the first available "Real Estate E&O Insurance Legal Update 2008" course. Further, Lawrence Alan Johnson, Kippy Karnal Smith, and Richard Thomas Valouche were ordered to be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,000.00.

RESULT: Richard Thomas Valouche was reprimanded for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Richard Thomas Valouche, and a Consent Order was issued. Richard Thomas Valouche was ordered to successfully complete the disciplinary education assignments applicable to Chapter 2 (Mandatory Requirements Under the *Real Estate Services Act*) of the Broker's Licensing Course, enrol in and attend the first available "Real Estate E&O Insurance Legal Update 2008" course. Further, Richard Thomas Valouche, Kippy Karnal Smith, and Lawrence Alan Johnson

were ordered to be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,000.00.

COMPLAINT: Contravention of sections 35(1)(a) [professional misconduct] and 6(2)(b) [managing broker responsibilities] of the *Real Estate Services Act*, sections 3-1(1)(a) and (b) 3-1(3) [managing broker responsibilities] and 7-7(1)(b) [failure to file Accountant's Report] of the Council Rules

ISSUE: Lifestyle Properties Ltd., Rossland, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening section 7-7(1)(b) of the Council Rules in that it failed to file an Accountant's Report with the Council by the prescribed date.

ISSUE: Dean Parker Bulfone, managing broker, Lifestyle Properties Ltd., Rossland, 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: Lifestyle Properties Ltd. was reprimanded for the contravention described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Lifestyles Properties Ltd., and a Consent Order was issued. Further, Lifestyle Properties Ltd. and Dean Parker Bulfone are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,000.00.

RESULT: Dean Parker Bulfone was reprimanded for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Dean Parker Bulfone, and a Consent

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Order was issued. Further, Dean Parker Bulfone and Lifestyle Properties Ltd. are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,000.00.

COMPLAINT: Contravention of section 35(1)(a) [professional misconduct] of the *Real Estate Services Act* and section 7-7(1)(b) [failure to file Accountant's Report] of the Council Rules

ISSUE: Ready Realty Ltd. dba Royal LePage Fraser Valley Realty, Mission, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening section 7-7(1)(b) of the Council Rules in that it failed to file an Accountant's Report with the Council by the prescribed date.

RESULT: Ready Realty Ltd. dba Royal LePage Fraser Valley Realty was reprimanded for the contravention described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Ready Realty Ltd. dba Royal LePage Fraser Valley Realty, and a Consent Order was issued. Further, Ready Realty Ltd. dba Royal LePage Fraser Valley Realty was ordered to pay enforcement expenses to the Council in the amount of \$1,000.00.

COMPLAINT: Contravention of sections 35(1)(a) [professional misconduct], 35(1)(d) [incompetence], 3(1)(a) [requirement for licence] and 7(5)(a) [relationships between brokerages and other licensees] of the *Real Estate Services Act*, sections 3-2(4) [associate broker and representative responsibilities] and 6-1 [payment to unlicensed persons prohibited] of the Council Rules

ISSUE: Rancho Management Services (B.C.) Ltd., Vancouver, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening section 27(2) of the *Real Estate Services Act* in that it, on or about March 5, 2007, paid remuneration for rental property management services in respect of Bayshore Drive, Vancouver to an unlicensed individual, contrary to section 6-1 of the Council Rules.

ISSUE: Marvin Gee Leng Chu, representative, Rancho Management Services (B.C.) Ltd., Vancouver, committed professional misconduct within the meaning of section 35(1)(d) of the *Real Estate Services Act* in that he: (a) permitted an unlicensed individual to provide real estate services and more specifically rental property management services on behalf of Mr. Chu and the brokerage from on or about July 2005 until on or about July 2007 involving properties on Melville Street, Vancouver and Bayshore Drive, Vancouver, contrary to sections 3(1)(a) and 7(5)(a) of the *Real Estate Services Act*; and (b) failed to ensure that an unlicensed individual was licensed to provide rental property management services on behalf of the brokerage from on or about July 2005 until on or about July 2007 prior to providing the said services, in accordance with sections 3(1)(a) and 7(5)(a) of the *Real Estate Services Act* and section 3-2(4) of the Council Rules.

RESULT: Rancho Management Services (B.C.) Ltd. was ordered to pay a discipline penalty to the Council in the amount of \$1,000.00 for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Rancho Management Services (B.C.) Ltd., and a Consent Order was issued. Further, Rancho Management Services (B.C.) Ltd. and Marvin Gee Leng Chu were ordered to be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00.

RESULT: Marvin Gee Leng Chu was reprimanded for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Marvin Gee Leng Chu, and a Consent Order was issued. Further, Marvin Gee Leng Chu and Rancho Management Services (B.C.) Ltd. were ordered to be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of section 35 [professional misconduct] of the *Real Estate Services Act* and section 3-4 [duty to

act with reasonable care and skill] of the Council Rules

ISSUE: Andrena Claire Koch-Schulte, representative, Coast Realty Group (Comox Valley) Ltd., Courtenay, committed professional misconduct within the meaning of section 35 of the *Real Estate Services Act* by failing, while acting as the Seller's representative in connection with the listing and sale of the Property and contrary to section 3-4 of the Council Rules, to use reasonable care and skill to determine whether the zoning class stated for the Property in the listing information prepared by or on behalf of Ms. Koch-Schulte was correct.

RESULT: Andrena Claire Koch-Schulte was reprimanded for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Andrena Claire Koch-Schulte, and a Consent Order was issued. Further, Andrena Claire Koch-Schulte was ordered to successfully complete a disciplinary course assignment the next available offering of Unit 4 "Listing Documentation" of the British Columbia Real Estate Association Residential Trading Services Applied Practice Course and to pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of sections 31(1)(b) [breach of Act] and 36 [disclosure] of the *Real Estate Act*

ISSUE: Alexander Stewart MacLeod, representative, Park Georgia Realty Ltd. (Coq), Coquitlam, breached section 36 of the *Real Estate Act* when he purported to act as a limited dual agent in a Contract of Purchase and Sale dated March 2, 2002 ("March contract") from RH and SH to Mr. MacLeod personally relating to property on Lansdowne Drive, Coquitlam, while also acting as a principal, contrary to section 31(1)(b) of the *Real Estate Act*.

RESULT: Alexander Stewart MacLeod was reprimanded for the breach as described above after an Agreed Statement of Facts, Proposed Acceptance of Find-

Disciplinary Decisions, *cont'd*

ings and Waiver was entered into between the Real Estate Council and Alexander Stewart MacLeod, and a Consent Order was issued. Further, Alexander Stewart MacLeod was ordered to pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of section 35(1)(a) [professional misconduct] of the *Real Estate Services Act* and section 3-1 [managing broker responsibilities] of the Council Rules

ISSUE: Heinz Albert Ebenau, managing broker, Underdog Realty Inc. dba Homelife Vermillion Forks Realty, Princeton, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he contravened section 3-1 of the Council Rules by permitting a licensee to act as a limited dual agent in the said transaction when the licensee was also a principal in the transaction which potentially conflicted with the interests of the said sellers.

RESULT: Heinz Albert Ebenau was reprimanded for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Heinz Albert Ebenau, and a Consent Order was issued. Further, Heinz Albert Ebenau was ordered to successfully complete the disciplinary assignment applicable to Chapter 9 (Professional Ethics) of the Real Estate Trading Services Licensing Course, successfully complete the next available Unit 1 “Agency Disclosure, Privacy and the Code of Ethics” of the British Columbia Real Estate Association Residential Trading Services Applied Practice Course, and pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of section 35(1)(a) [professional misconduct] of the *Real Estate Services Act*, and sections 3-3(1)(a) [act in best interest of client], 3-3(1)(d) [advise client to seek independent professional advice] and 3-3(1)(i) [avoid conflict of interest] of the Council Rules

ISSUE: Susan Cathrine Collins, representative, Okanagan Gateway Realty Ltd.

dba Realty Executives Princeton, Princeton, while licensed with Underdog Realty Inc. dba Homelife Vermillion Forks Realty, Princeton, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that she: (a) undertook to act as a limited dual agent in the said transaction when she was one of the buyers and failed to perceive the potential conflict with the interests of the said sellers, contrary to section 3-3(1)(a) of the Council Rules; (b) failed to take reasonable steps to avoid a potential conflict of interest by approaching the sellers directly for an extension to the completion date by addendum dated February 23, 2007, contrary to section 3-3(1)(i) of the Council Rules; and (c) failed to advise the sellers to obtain independent legal advice before signing the said addendum dated February 23, 2007 with respect to extending the completion date, contrary to section 3-3(1)(d) of the Council Rules.

RESULT: Susan Cathrine Collins was reprimanded for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Susan Cathrine Collins, and a Consent Order was issued. Further, Susan Cathrine Collins was ordered to successfully complete the disciplinary assignments applicable to Chapter 2 (The *Real Estate Services Act*) and Chapter 9 (Professional Ethics) of the Real Estate Trading Services Licensing Course, and pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of section 35(1)(a) [professional misconduct] of the *Real Estate Services Act*, and sections 3-3(1)(i) [duties to clients], 5-8 [disclosure] and 5-9 [disclosure of interest in trade] of the Council Rules

ISSUE: Robin Julieana Smith, representative, 710823 B.C. Ltd. dba Logan Lake Realty, Logan Lake, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening sections 3-3(1)(i), 5-8 and 5-9 of the Council Rules in that she: (a) failed to take reasonable steps to avoid

a conflict of interest as required by section 3-3(1)(i) of the Council Rules in that she acted in the capacity of a limited dual agent in the purchase of the said property in which she and her spouse were also the buyers, and therefore could not possibly remain impartial to the interests of both parties; and (b) failed to provide, in writing, on the prescribed form, a Disclosure of Interest in Trade, to the said buyer on the disposition of the said property by her associate to whom she was providing real estate services, prior to accepting the offer on the said property as required by sections 5-8 and 5-9 of the Council Rules.

RESULT: Robin Julieana Smith was reprimanded for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Robin Julieana Smith, and a Consent Order was issued. Further, Robin Julieana Smith was ordered to successfully complete the disciplinary assignments applicable to Chapter 2 (The *Real Estate Services Act*) and Chapter 12 (The Law of Agency) of the Real Estate Trading Services Licensing Course, enrol in and attend the first available “Real Estate E&O Insurance Legal Update 2008” course, and pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of section 35(1)(a) [professional misconduct] of the *Real Estate Services Act* and section 3-4 [duty to act with reasonable care and skill] of the Council Rules

ISSUE: Robert Francis Ezzy, representative, Northstar Realty Ltd. dba Royal LePage Northstar Realty, Surrey, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening section 3-4 of the Council Rules in that he, after leaving a message with the buyer’s representative that a leak had occurred in the subject unit, failed to follow up and clarify with the buyer’s representative that a leak had occurred in another unit and to have the buyer check the subject unit to ascertain whether there was any damage prior to the completion date.

RESULT: Robert Francis Ezzy was reprimanded for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Robert Francis Ezzy, and a Consent Order was issued. Further, Robert Francis Ezzy was ordered to enrol in and attend the first available “Real Estate E&O Insurance Legal Update 2008” course and pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of section 35(1)(a) [professional misconduct] of the *Real Estate Services Act* and section 3-4 [duty to act with reasonable care and skill] of the Council Rules

ISSUE: Su (Sue) Yun Chen, representative, Apex International Services Ltd. dba Century 21 Apex International, Delta, while licensed with Northstar Realty Ltd. dba Royal LePage Northstar Realty, Surrey, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening section 3-4 of the Council Rules in that she, after a message was left with the buyer’s representative that a leak had occurred in the subject unit, failed to follow up and clarify with the buyer’s representative that a leak had occurred in another unit and to have the buyer check the subject unit to ascertain whether there was any damage prior to the completion date.

RESULT: Su (Sue) Yun Chen was reprimanded for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Su

(Sue) Yun Chen, and a Consent Order was issued. Further, Su (Sue) Yun Chen was ordered to enrol in and attend the first available “Real Estate E&O Insurance Legal Update 2008” course and pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of section 35 [professional misconduct] of the *Real Estate Services Act* and section 4-7 [false or misleading advertising prohibited] of the Council Rules

ISSUE: Keith Robert Jakes and Keith Jakes Personal Real Estate Corporation, 62-431 Realty Ltd. dba Re/Max Pentiction Realty, Pentiction, while licensed as Keith Robert Jakes, representative, 62-431 Realty Ltd. dba Re/Max Pentiction Realty, Pentiction, committed professional misconduct within the meaning of section 35 of the *Real Estate Services Act* by advertising, in contravention of section 4-7 of the Council Rules, that the units in the Property would have secure covered parking when in fact three of the twenty-four parking spaces were covered but not secured.

RESULT: Keith Robert Jakes was reprimanded for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Keith Robert Jakes, and a Consent Order was issued. Further, Keith Robert Jakes was ordered to successfully complete the disciplinary assignment applicable to Chapter 9 (Professional Ethics) of the Real Estate Trading Services Licensing Course and to pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of sections 35 [professional misconduct] and 35(1)(a) [contravention of Act, Regulations, or Council Rules] of the *Real Estate Services Act* and section 3-4 [duty to act with reasonable care and skill] of the Council Rules

ISSUE: Julie Anne Harrison, associate broker, Vantage Property Services Inc. dba Realty Executives Pentiction, Pentiction, while licensed with 430871 B.C. Ltd. & 430873 B.C. Ltd. dba Sutton Group – Skaha Realty, Pentiction, committed professional misconduct within the meaning of section 35 of the *Real Estate Services Act* by contravening section 35(1)(a) of the *Real Estate Services Act* and section 3-4 of the Council Rules in that she failed in her capacity as the Buyers’ representative to apply reasonable care and skill in that she did not include in the Contract of Purchase and Sale she drafted on behalf of the Buyers a clause providing that the Buyers’ offer to purchase the Property was conditional on the property including a secured parking stall or equivalent measures to protect the Buyer’s interests.

RESULT: Julie Anne Harrison was reprimanded for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Julie Anne Harrison, and a Consent Order was issued. Further, Julie Anne Harrison was ordered to successfully complete the disciplinary assignment applicable to Chapter 9 (Professional Ethics) of the Real Estate Trading Services Licensing Course and to pay enforcement expenses to the Council in the amount of \$750.00. ■

Feedback?

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

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