

Included
in this issue:
Council Member
Nomination
Information
See p9

Report from Council

Advertising Compliance Reminder

The Council continues to be made aware of examples of non-compliant advertising resulting in administrative penalties, starting at \$250 and going as high as \$1000, being applied against licensees. To avoid facing an administrative penalty and the other costs that may be associated with changing advertising to bring it into compliance, licensees are reminded of the following:

The Council Rules require that advertising must contain the name of the related brokerage 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. This includes traditional print, billboard, radio and television advertising, in addition to licensees' websites, internet classified advertising, such as, EBAY, USEDVANCOUVER, CRAIGSLIST, KIJJI, USEDVICTORIA, and social media, such as, TWITTER, YOUTUBE, FACEBOOK, MYSPACE. (See section 4-6(2) of the Council Rules.)

The Council Rules permit Team Names to be advertised if a team name is approved and registered with the Council. Seeking approval of a team name is easy; send a letter, fax or email to the Council setting out the proposed name of the team, along with the names of the licensed and unlicensed members of the team for approval and registration. The

team name will not be approved if it may be construed as the name of a licensed brokerage. Licensees can find more information on team names in the online *Professional Standards Manual* at <http://www.recbc.ca/licensee/psm.htm> (See section 4-6(5) of the Council Rules.)

The Council Rules require that Advertising of Personal Real Estate Corporations must be done in the licensee name of the personal real estate corporation, not in the name of the licensee name of the controlling individual. For example:

Susan Wong Personal Real Estate
Corporation

It is not permissible to use the acronym "PREC" in your advertising. The words "Personal Real Estate Corporation" must be included in all advertising as shown in the example above. The only exception to this is for real estate board MLS® systems which, in some cases, cannot accommodate the number of characters required to spell out "Personal Real Estate Corporation." (See section 4-6(3)(b) of the Council Rules.)

Advertising compliance is a responsibility shared by both licensees and managing brokers, on behalf of their brokerages. In a competitive market, creative advertisements can help brokerages



and licensees stand out and differentiate themselves from their competitors. Unfortunately, in some instances, licensees take their advertising creativity beyond acceptable boundaries and into the territory of false and misleading advertising, with overblown promises and inaccurate representations.

Having "too many ads" does not change the shared responsibility to comply. Managing brokers should also periodically discuss examples of appropriate and inappropriate advertising practices, to ensure licensees' understanding of the requirements of sections 4-6, 4-7 and 4-8 of the Council Rules.

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

This Issue:



- Advertising Compliance Reminder
- Reminder About Payment of Remuneration to Licensees
- Interest Earned on Brokerage Pooled Trust Accounts

- New Strata Property Regulations Introduced
- Allowing Time to Obtain Strata Documents
- Permitted Investments Under the Strata Property Regulation
- Surplus Special Levy Funds

- Condition Inspection Reports
- SPECIAL SECTION: Council Nomination Information
- How to Avoid Complaints and a Council Investigation
- Disciplinary Decisions

A Note from the Chair



Bryon Brandle,
Chair

Happy New Year as we look forward to another exciting year ahead.

The lead story in this *Report* contains an important reminder about advertising as well as information about advertising Personal Real Estate Corporations. Licensees are once again reminded that all advertising must include the name of the licensee's related brokerage.

The annual Council elections are coming up in May and the Council is currently seeking nominations to fill positions where vacancies will exist. Once again this year, the Council is including nomination information and a tear-out nomination form in the middle of this newsletter. It is hoped that including this information in this newsletter (as opposed to a separate mailing) will increase

licensee awareness of the nomination information. I encourage licensees to take a few minutes and consider nominating qualified individuals to serve on the Council in districts where a vacancy will exist.

There are a number of articles contained in this newsletter that relate to strata and rental property management activities. I strongly urge all licensees that provide services to rental or strata clients to familiarize themselves with the information contained in these articles.

Finally, those licensees wishing to receive the Council newsletter by email should advise the Council of this in writing as indicated below.

On behalf of the Council, I hope that you enjoy a prosperous and successful year.

Bryon Brandle
Chair

Receive the Council Newsletter by Email

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

Council Employment Opportunity: Auditor/Investigator

The Council requires an Auditor/Investigator on a one year maternity contract basis to join our team to conduct inspections on real estate brokerages, perform field investigations and review annual Accountant's Reports. Qualifications must include a professional accounting designation. The ideal candidate will have considerable knowledge of financial auditing standards and techniques, accounting principles and systems, and previous auditing experience. Candidates must have access to a vehicle and be available to travel throughout BC as required. We offer a competitive salary and benefits package. Please submit your resume with cover letter outlining qualifications and experience to Ms. Lisa Holst, Director, Accounting and Audit, by **March 5, 2012**. Email: info@recbc.ca or fax: 604-683-4117. ■

Office Closures

The Council office will be closed on **Friday, April 6, 2012** for Good Friday and **Monday, April 9, 2012** for Easter Monday.

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

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

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

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

STATISTICS February 2012

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

Role of the Council

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

Report from Council

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

Canada Post

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

PM# 40016497

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recycled paper

Reminder About Payment of Remuneration to Licensees

Section 7(3)(b) of the *Real Estate Services Act* states that a managing broker, associate broker, or representative 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.

The definition of remuneration is very broad and includes any form of remuneration, including any commission, fee, gain or reward, whether the remuneration is received or is to be received, directly or indirectly.

The Council received a complaint which was that a listing representative and a seller agreed in the written service agreement to the payment of an administration fee in the amount of \$250.00. The seller prepared a cheque, with the payee left blank, and provided this cheque to the listing representative.

After the listing expired, the listing representative deposited this cheque into his personal bank account. It was the seller's understanding that this cheque would only be cashed if and when the property sold.



Licensees should ensure that all advance fees, administration fees, retainers or any other form of remuneration are included in the written service agreement

Section 5-1(4)(f) of the Council Rules requires that a written service agreement must state the remuneration to be paid under that agreement and the circumstances in which it will be payable.

Licensees should ensure that all advance fees, administration fees, retainers or any other form of remuneration are

included in the written service agreement, including the circumstances in which it will be payable, and paid to the brokerage. If a licensee is entitled to any of these forms of remuneration, they must only receive same from their brokerage as required under section 7(3)(b) of the *Real Estate Services Act*. ■

Interest Earned on Brokerage Pooled Trust Accounts

The Council has received queries from brokerages as to what to do with the interest earned in a brokerage pooled trust account that holds only security deposits and/or pet damage deposits on behalf of landlords.

Under the *Real Estate Services Act*, section 29(2) exempts interest earned on money held by the brokerage under a duty under the *Residential Tenancy Act* from being required to be forwarded to the Real Estate Foundation.

The Residential Tenancy Branch sets the rate of interest which must be paid to tenants upon return of their deposit(s); the exemption under section 29(2)

allows interest earned on this account to offset the interest owed to the tenant. Interest in excess of the amount required to be paid to tenants under a duty under the *Residential Tenancy Act* is the property of the individual landlords on whose behalf money is held in the pooled trust account.

If it is the intention of the landlords and the brokerage that this excess interest is to be retained by the brokerage and not paid to the landlords, an agreement to this effect must be made with the landlords and contained



in the written service agreements with the landlords in accordance with sections 5-1(4)(e) and (f) and section 5-1(5)(d) of the Council Rules. ■

New Strata Property Regulations Introduced

The Office of Housing and Construction Standards has advised that the new *Strata Property Act* regulations for depreciation reports and Form B (the Information Certificate) have been made and that certain previously passed amendments to the Act have been brought into force.

The new regulation is available at www.housing.gov.bc.ca/strata/regs/OIC-SPA.pdf. Additional information is available at the Strata Property website www.housing.gov.bc.ca/strata/regs/index.htm; updated strata property guides are expected in February 2012.

These amendments were made with extensive consultation with the strata community, including strata associations, strata lot owners, professionals, legal experts and the public.

Depreciation Reports Highlights

- Like other provinces, depreciation reports are now mandatory unless a strata corporation exempts themselves by an annual $\frac{3}{4}$ vote. Strata corporations will have by December 13, 2013 to obtain a depreciation report or hold a $\frac{3}{4}$ vote to exempt. Strata corporations with less than five units are not required to prepare depreciation reports or hold a $\frac{3}{4}$ vote to exempt themselves.
- Given the wide range of strata properties, strata corporations will have the flexibility to select the person or team best suited to analyze their particular property. The regulations require that the depreciation report provide the person's name, qualifications, whether they have errors and omissions insurance and their relationship to the strata corporation.
- Depreciation reports will include an onsite visual inspection and are to be updated every three years. Corporations will have 18 months from the time a $\frac{3}{4}$ vote expires to get a depreciation report.
- Strata corporations are not required to fund contingency reserve funds (CRF) above the minimum previously required (25% of the operating budget).



However, strata owners may now make any additional contributions to the CRF by simple majority vote. (Previously, an annual $\frac{3}{4}$ vote was required to make contributions to the CRF above 100% of the operating budget.)

- The legislation and regulations are only one component of depreciation reports. Education and best practices will also provide information on: selecting a qualified person or team; formatting and presenting a report; securing materials electronically to facilitate regular updating; and best practices in maintaining, repairing and funding common property and limited common property.

Form B Overview

The Form B has been revised to improve disclosure:

- By January 1, 2014, strata corporations will be required to provide additional information to prospective purchasers

on parking and storage allocated to the strata lot.

- As well, by March 1, 2012, strata corporations must attach: copies of the strata corporation's rules; the current budget; the owner developer's Rental Disclosure Statement, if any; and the most recent depreciation report, if any. With the exception of the depreciation report, none of these requirements are new.

If they choose to do so, strata corporations may use the revised Information Certificate sooner than the required dates.

Regulations for audited financial statements are expected next year. The consultation process identified some timing issues that need to be addressed.

Please feel free to share this information with others you think may be interested. Any updates will be posted to the Strata Property webpage. ■

Allowing Time to Obtain Strata Documents

Are your clients paying more than they need to in order to obtain strata corporation documents?

If documents are requested to be provided in accordance with the timeframe set by the *Strata Property Act*, the Strata Property Regulation establishes the maximum amount that can be charged.

Sections 36(3) and 59(1) of the *Strata Property Act* and section 25 of the *Interpretation Act* effectively give the strata corporation **eight days**, following receipt of a request, to deliver a Form B—Information Certificate, the bylaws and rules and up to **15 days**, following receipt of a request, to provide copies of the other records maintained by the strata corporation. Under the *Strata Property Act*, unless a request for documents is personally presented to a strata council member, the strata corporation is deemed not to have received the request for four days. Therefore, the eight and 15 day periods do not

start until four days after the request was faxed, mailed or emailed to the strata corporation or strata manager.

Section 4.2 of the Strata Property Regulation sets out the maximum fee that a strata corporation may charge for providing a copy of a record or document prescribed under section 36 of the *Strata Property Act* at no more than 25 cents per page. Further, section 4.4 of the Strata Property Regulation restricts the maximum fee that the strata corporation may charge for an Information Certificate, including the required attachments, to \$35, plus the cost of photocopying at no more than 25 cents per page. (These rates are subject to change by regulation.)

While the *Strata Property Act* and the Strata Property Regulation establish both maximum time frames and maximum fees to be charged for providing copies of a strata corporation's records, the legislation is silent on whether additional fees may be charged



for providing these records in a shorter time period than the maximum allowed.

When strata corporations, or strata managers acting on their behalf, are required to provide documents sooner than stipulated by the legislation, licensees should be aware that some may charge additional fees.

When drafting offers that include obtaining documents for review by a prospective buyer, licensees should recommend a subject removal date that allows enough time for the strata corporation or strata manager to respond to a request and for buyers to review those documents. ■

Permitted Investments under the Strata Property Regulation

Licensees who are providing strata management services should advise their strata corporation clients as to the type of investments that are permitted under the Strata Property Regulation before obtaining instructions from the client as to what types of investments should be made with the Contingency Reserve Funds (CRF) or special levy funds.

The Council has disciplined licensees for failing to properly advise strata corporation clients in this regard and for improperly investing strata corporation funds. For further information, please see: www.recbc.ca/complaints/discipline/Hensman&Nestor.htm

Section 7-9(8) of the Council Rules requires a licensee providing strata management services to be subject to the same restrictions that are set out in the *Strata Property Act* with respect to investments made on behalf of strata corporation cli-

ents. Sections 95(2) and 108(4)(b) of the *Strata Property Act* require that a strata corporation must invest CRF or special levy funds in one or both of:

(a) Investments permitted by the regulations

Section 6.11 of the Strata Property Regulation provides an exhaustive list of the type of investments that are permitted. A common thread in many of the permitted investments is that they are guaranteed; for example:

- securities, the payment of the principal and interest of which is guaranteed by Canada, or a province; or
- guaranteed trust or investment certificate of a bank.

A complete list of investments permitted under section 6.11 of the Strata Property Regulation can be found at: www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/12_43_2000#section6.11



(b) Insured accounts with saving institutions in British Columbia

Where a brokerage is maintaining these investment accounts on behalf of a strata corporation, the accounts must be designated as trust accounts in the records of the brokerage and they must also be reflected as trust accounts in the statements issued by the savings institution pertaining to these accounts. ■

Surplus Special Levy Funds

Whenever a strata corporation raises funds by means of a special levy, the strata corporation may only use those funds in the manner set out in the resolution. If there are surplus funds, section 108(5) of the *Strata Property Act* stipulates that the strata corporation must pay to each strata lot owner the portion of the surplus levy which is calculated by unit entitlement unless no owner is entitled to receive more than \$100, in which case the excess funds can be deposited to the contingency reserve fund.

Section 108(5) of the *Strata Property Act* provides as follows:

If the money collected exceeds the amount required, or for any other reason is not fully used for the purpose set out in the resolution, the strata corporation must pay to each owner of a strata lot the portion of the unused amount of the special levy that is proportional to the contribution made to the special levy in respect of that strata lot.

Section 108(5) of the *Strata Property Act* requires that the surplus special levy must be paid to the **current** owner, which may not be the owner who paid the special levy if the strata lot has sold between the time the special levy was paid and the time the surplus was refunded.

Dealing with surplus special levies raises issues for licensees providing trading services and for licensees providing strata management services.

Licensees Providing Trading Services

Because section 108(5) of the *Strata Property Act* requires the strata corporation to pay a special levy to the current owner, if the owner who is selling the strata lot wishes to recover the surplus, special arrangements must be made.



The first step a licensee should take when a strata lot is listed for sale is to determine from the seller whether there are any special levies for which there may be a surplus.

If there is a possibility that a previously approved special levy may result in a surplus, the seller should be made aware that under the *Strata Property Act* the strata corporation is required to pay the surplus to the owner shown on title at the time of payment. If the seller wishes to retain the right to recover the surplus special levy after completion of a sale or the right to vote on any future decisions with respect

to the disposition of the surplus, the seller must negotiate these rights with a prospective buyer. If the seller wishes to negotiate an agreement that would entitle the seller to receive the surplus special levies or vote on decisions relating to the disposition of the surplus, the seller and the buyer should be advised to seek independent legal advice prior to entering into an unconditional Contract of Purchase and Sale. If a seller or a buyer wants to make the contract subject to entering into such an agreement, the Contract of Purchase and Sale should include a subject clause as follows:

Continues on Page 7

The strata corporation must pay to each strata lot owner the portion of the surplus levy which is calculated by unit entitlement, unless no owner is entitled to receive more than \$100

Continued from Page 6

Recovery of Proceeds Payable to Strata Corporation Clause

Subject to the Buyer and Seller entering into a written contract prepared by the Seller's lawyer on or before (date) that provides for the assignment from the Buyer to the Seller for nominal consideration of all the Buyer's right, title and interest in any funds payable by the strata corporation to the Buyer as a result of (Enter the reason for the payment such as the return of money assessed by a special levy between _____ certain dates.)

This condition is for the sole benefit of the Seller. (Buyer)

The agreement contemplated by the subject clause is an agreement between the seller and the buyer and does not involve the strata corporation. Because the strata corporation is not a party to the agreement, the strata corporation is not obligated to pay out the funds other than to the current owner as required by the *Strata Property Act*. It will be up to the seller to enforce the agreement with the buyer and the seller should not expect the strata corporation to assist the seller by paying the funds directly to the seller.

For additional information, licensees should review the Professional Standards Manual at www.recbc.ca/licensee/PSM/PSM2-5.htm#jump115

Licensees Providing Strata Management Services

Licensees providing strata management services must advise strata corporations of section 108(5) of the *Strata Property Act* which requires strata corporations to pay surplus special levies to

each **owner** of a strata lot in proportion to the contribution made to the special levy in respect to the strata lot. An owner is defined as the person shown on the title at the Land Title Office.

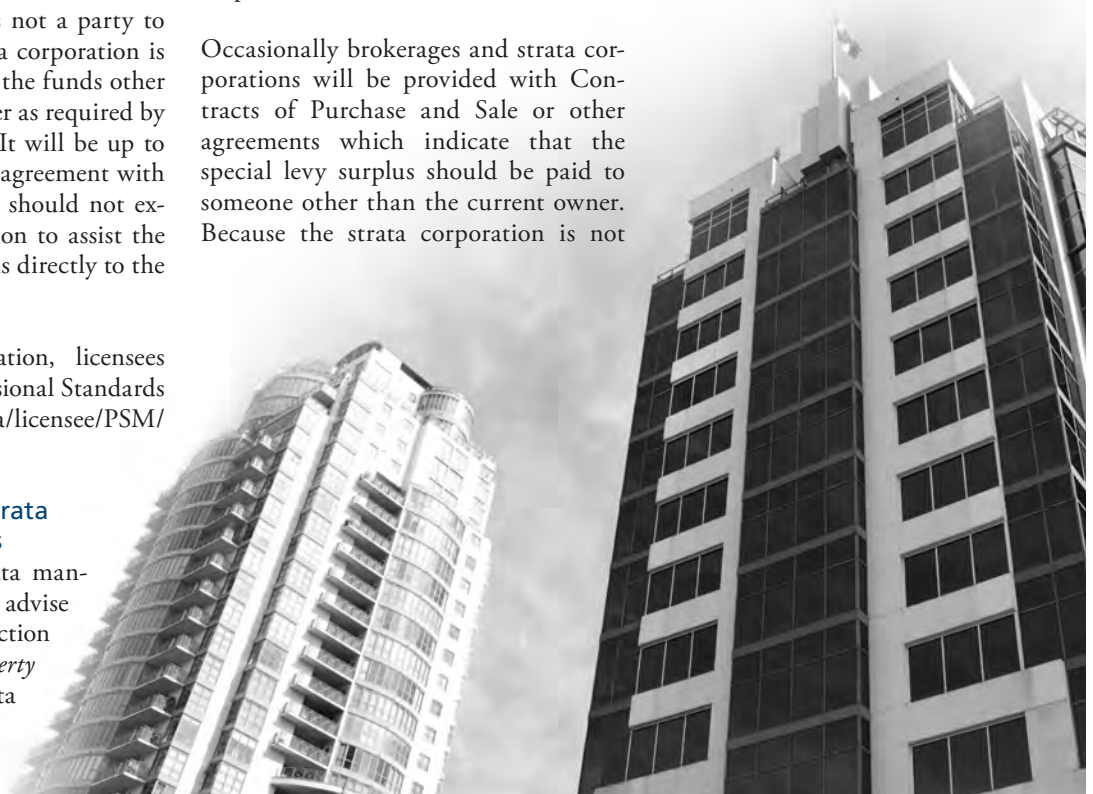
Section 108(5) was amended in December 2009 to reference the owner of a strata lot. By requiring that the surplus be paid to each **owner** of a strata lot, the amendment to section 108(5) has clarified that the surplus must be paid to the **current** owner. If, however, the repayment of the surplus would result in no owner receiving more than \$100, the surplus may be deposited into the contingency reserve fund.

As with all funds held on behalf of a strata corporation, when considering the payout of a surplus special levy, the brokerage should only disburse funds after receiving instructions from the strata corporation.

Occasionally brokerages and strata corporations will be provided with Contracts of Purchase and Sale or other agreements which indicate that the special levy surplus should be paid to someone other than the current owner. Because the strata corporation is not

a party to the agreement, the strata corporation is not obligated to pay out the funds other than to the current owner as required by the *Strata Property Act*. If the strata corporation is contemplating paying the surplus levy funds to anyone other than the current owner, the brokerage should advise the strata corporation of section 108(5) of the *Strata Property Act* and recommend that the strata corporation seek legal advice.

The licensee should then disburse the funds in accordance with the instructions of the strata corporation. In the event the brokerage is instructed to release the surplus to a party other than the registered owner, licensees should insure that they have written instructions from the strata corporation to that effect. ■



Condition Inspection Reports

May condition inspection reports be completed by unlicensed individuals engaged by a brokerage?

The Council has received complaints that unlicensed individuals employed by brokerages are completing reports of move in or move out inspections of the rental property, commonly referred to as condition inspection reports.

The concern is that the unlicensed employee is either completing the report incorrectly or without proper authorization of the licensed rental property manager, which may result in owners incurring additional costs for repairs that may have otherwise been the responsibility of the tenant.

“Rental property management services” as defined in section 1 of the *Real Estate Services Act* means any of the following services provided to or on behalf of an owner of rental real estate:

- (a) trading services in relation to the rental of the real estate;
- (b) collecting rents or security deposits for the use of the real estate;
- (c) managing the real estate on behalf of the owner by
 - (i) making payments to third parties;
 - (ii) negotiating or entering into contracts;
 - (iii) supervising employees or contractors hired or engaged by the owner, or
 - (iv) managing landlord and tenant matters.

but does not include an activity excluded by regulation.

An individual wishing to provide any of the above services is required to be licensed under the *Real Estate Services Act*. However, section 2.14 of the Real Estate Services Regulation exempts a caretaker or manager employed by a brokerage that is licensed to provide rental property management services from licensing in respect of any of the following activities in relation to the provision of rental property management, if these services are provided in their capacity as an employee of the brokerage:

- (1)(a) if the caretaker or manager complies with subsection (2), collecting money in relation to the rental real estate, including money collected as rent, security deposits or pet damage deposits;
- (b) showing the rental real estate to prospective tenants;
- (c) receiving and presenting applications in respect of rental real estate from prospective tenants;
- (d) supervising employees or contractors hired or engaged by the brokerage;
- (e) communicating between landlords and tenants respecting landlord and tenant matters.
- (2) on receipt of money referred to in subsection (1)(a), the exempt caretaker or manager must promptly deliver the money to the brokerage.

Completing condition inspection reports is contemplated in the definition under subsections (c)(ii) “negotiating or entering into contracts” and (c)(iv) “managing landlord and tenant matters”.

The Council considers a move in or move out inspection report, or the “Condition Inspection Report” as provided by the Office of Housing and Construction Standards, to be a contract between the landlord and tenant. It sets out an agreement between the landlord and tenant as to what repairs must be completed at the start of the tenancy, and what repairs the tenant is responsible for at the end of the tenancy, and the amount of the deduction from the



tenant’s security deposit (and pet damage deposit, if applicable).

In most cases, the written service agreement between the landlord and brokerage authorizes the licensed rental property manager to enter into contracts on behalf of the landlord, which includes completing and signing condition inspection reports.

The exemption for caretakers or managers employed by a brokerage under section 2.14 of the Real Estate Services Regulation does not, however, apply in regard to negotiating or entering into contracts, or managing landlord or tenant matters on behalf of the landlord. As such, the completion and signing of condition inspection reports cannot be completed by an unlicensed individual under the exemption.

Licensees providing rental property management services must ensure that they are completing and signing condition inspection reports on behalf of their landlord clients. ■

TO: ALL REAL ESTATE LICENSEES

RE: NOTICE OF ELECTION—REAL ESTATE COUNCIL MEMBER NOMINATIONS

Council Composition

The Council is comprised of 16 members, three of which are public members appointed by the provincial government. The remaining 13 members are chosen through an election process. Of the 13 elected members, nine are managing brokers or associate brokers, three are representatives and one is the rental/strata property management representative. Council members represent all eight counties in the province by way of Districts pursuant to section 76 of the *Real Estate Services Act* (RESA) and are elected for two-year terms, with about half of the Council elected each year, thus ensuring continuity.

This Year's Election

This year, the term of office for the following Council members expires on June 30, 2012. As a result, elections to fill vacancies for a two-year term will be held on May 9, 2012.

Managing Broker/Associate Broker Members

- In District #1 (County of Vancouver), the terms of **William (Bill) Binnie** and **William (Bill) Phillips** expire.
- In District #3 (County of Nanaimo), the term of **Susan McGougan** expires.
- In District #4 (County of Westminister north of the south bank of the Fraser River), the term of **Marshall Cowe** expires.
- In District #5 (County of Westminister south of the Fraser River), the term of **Gerry Martin** expires.

Only individuals licensed at the managing broker or associate broker level may nominate other managing brokers or associate brokers as candidates.

Representative Members

- In Districts #2, 3, 6, 7 (Combined Counties of Victoria, Nanaimo, Yale, Kootenay, Cariboo, and Prince Rupert), the term of **Subhadra Ghose** expires.

Only individuals licensed at the representative level may nominate other representatives as candidates.

From the above, you will note that there will be no election for a managing broker/associate broker member in District #2 (County of Victoria), District #6 (County of Yale), and District #7 (Combined Counties of Kootenay, Cariboo and Prince Rupert), and no election for a representative member in District #1 (County of Vancouver), Districts #4 and #5 (County of Westminister north of the south bank of the Fraser River and County of Westminister south of the Fraser River) and no election for a rental/strata property management member.

Nomination and Election Process

Pursuant to section 2-3 of the *Real Estate Service Act* General Bylaws, every licensee is receiving this Notice of Election, as well as a nomination form. Where a vacancy exists, the attached nomination form must be used by those licensees who wish to be a candidate or to nominate a candidate. **Candidates nominated for election for a District must be licensed at a location in that District.**

Nominations must be received at the Council office not later than 4:30 p.m. on **Monday, April 2, 2012**. It would assist in the preparation of the election material if nominations could be returned *as soon as possible*. Voting papers, together with a biographical summary of each candidate, will be mailed to all licensees (where elections are being held) in mid-April and must be received in the Council office not later than **Tuesday, May 8, 2012**. The ballots will be counted on **Wednesday, May 9, 2012**.

Please see the reverse of this page for detailed information on the roles and responsibilities of Council members.

Yours truly,



Robert O. Fawcett
EXECUTIVE OFFICER

Council Member Roles and Responsibilities

What is the Real Estate Council?	The Real Estate Council of British Columbia (“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 <i>Real Estate Services Act</i> (RESA), Regulation and Council Rules. 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 RESA. A Chair and Vice-Chair are elected annually by the members of the Council.
What is the role of Council Members?	Briefly stated, the role of a Council member is to uphold the licence law administered by the Real Estate Council. This involves reviewing complaint files, sitting on Hearing Committees and determining appropriate penalties for contraventions of RESA. In addition to administering licence law, Council members also advise on matters relating to legislative amendments, industry practice and policy.
Who is eligible to serve on Council?	Any licensee in the province is eligible to serve on the Council; however, those elected have traditionally been individuals of broad experience who enjoy the professional respect of other licensees. During the election process, only representatives may nominate other representatives as candidates, and only managing brokers or associate brokers may nominate other managing brokers or associate brokers as candidates. Candidates nominated for election for a particular District must be licensed at a location in that District. A map showing the eight Counties on which the District boundaries are based may be viewed on the Council’s website at www.recbc.ca .
What is the length of a term on Council?	Council members are elected for two-year terms, with half of the Council elected each year, thus ensuring continuity. Under section 77 of RESA, Council members may not serve more than six consecutive years.
Do I require any special training?	As noted above, Council members are generally real estate professionals with many years of professional experience. Some special training is required for specific Council member duties, including hearing procedures and administrative law. This training, however, is provided to Council members.
What is the time commitment?	<p>The following is a general list of the major time commitments expected of Council members:</p> <ul style="list-style-type: none">• There are usually eight meetings of the entire Council each year. These are all-day meetings that are generally held in Vancouver.• Council members usually serve on two committees (i.e. Education & Licensing, Industry Review, Communications, Property Management). These committees generally meet in advance of Council meetings, either by conference call or in person at the Council office.• Council members serve on the Complaints Committee for about three months per year. This Committee meets to review complaints and recommend future action for the various files (e.g. dismissal, a letter of warning or a hearing). In preparation for these meetings, Committee members typically spend six to eight hours reading and reviewing complaint files.• Council members serve on various Hearing Committees with formal hearings generally lasting one or two days.• Council members also participate in various training sessions and conferences held periodically throughout the year. <p>Prospective Council members are encouraged to contact an existing or retiring Council member in the District in which they are licensed. It is hoped that this contact will provide a clear perspective of travel and time commitments. A list of current Council members can be found on the Council’s website at www.recbc.ca.</p>
Are there any restrictions to serving on Council?	In order to reduce any potential conflict of interest, members of the Council must not sit as a director, officer or employee of another real estate organization (e.g. British Columbia Real Estate Association or any of its 12 member boards).
How does the election process work?	If you are interested in becoming a Council member, you must complete the nomination form provided and return it to the Council office by 4:30 p.m. on Monday, April 2, 2012 . The election will be held Wednesday, May 9, 2012 , with those elected taking office July 1, 2012.
Where can I get further information?	For further information about the roles and responsibilities of Council members, please contact Robert O. Fawcett, Executive Officer at the Council office at 604-683-9664, toll-free 1-877-683-9664 or email rfawcett@recbc.ca .

Nomination Form for 2012 Election of Members of the Real Estate Council

Candidates who wish to run for election to the Real Estate Council must complete this nomination form carefully to accurately indicate the position being sought. As indicated on the Notice of Election, there are elections being held this year as follows:

Managing Broker/Associate Broker Members

Elections at the managing broker/associate broker level will be held in the following four Districts. If you have decided to stand for election, please check the box opposite the District for which you are eligible to stand for election. In addition, please complete the information below, as well as the reverse side of this form. Please note that, in order to be a candidate for one of the four elections listed below, you must be licensed at the managing broker/associate broker level and also be licensed to a brokerage located in the District that you seek to represent.

- District #1 (County of Vancouver) Managing broker/associate broker member
- District #3 (County of Nanaimo) Managing broker/associate broker member
- District #4 (County of Westminister north of the south bank of the Fraser River) Managing broker/associate broker member
- District #5 (County of Westminister south of the Fraser River) Managing broker/associate broker member

Representative Members

There will be one election at the representative level covering the following districts: Combined Counties of Victoria, Nanaimo, Yale, Kootenay, Cariboo, and Prince Rupert. If you have decided to stand for election, please check the box and complete the information below and on the reverse side of this form. Please note that, in order to be a candidate for this election, you must be licensed at the representative level and also be licensed to a brokerage located in one of the counties listed above.

- District #2, 3, 6 and 7 (Combined Counties as indicated above) Representative member

PLEASE PRINT CLEARLY

Name of Candidate _____

Brokerage Name _____

Brokerage Address _____

Nominated by Name _____

Brokerage Name _____

Address _____

Signature of Nominator _____

Seconded by Name _____

Brokerage Name _____

Address _____

Signature of Secunder _____

Each being licensed at the appropriate licence level and/or category

Dated _____, 2012 Signature of Candidate _____

To ensure your candidacy receives proper consideration by those entitled to vote, it is recommended that you provide the biographical notes indicated on the reverse of this form.

This form must be returned to the office of the Real Estate Council, Suite 900–750 West Pender Street, Vancouver, BC, V6C 2T8 not later than 4:30 pm on **Monday, April 2, 2012**. You may fax this form to 604-683-4117 or email a scanned copy to info@recbc.ca, BUT the original is still required to be submitted to the Council office. If you have any questions regarding this nomination form, please contact Robert O. Fawcett, Executive Officer at the Council office.

Nomination Form for 2012 Election of Members of the Real Estate Council, PAGE 2

Nomination Form, *cont'd*

Candidate Name _____

The following information is requested from each candidate in order that brief biographical notes may be mailed with the voting papers.

Name for Biographical Notes (*if same as on page one, do not complete*) _____

Position in brokerage (*Please check one box*): Managing Broker Associate Broker Representative

Number of years licensed in British Columbia _____

Memberships held in real estate organizations (e.g. Real Estate Board, BCREA, REIBC, etc.)

Positions or Offices held in real estate organizations (e.g. Director, BCREA; President of Board, etc.)

Position	Details
_____	_____
_____	_____
_____	_____
_____	_____

Other interests, leadership positions and memberships, etc. (e.g. service clubs, community organizations, sports groups, etc.)

Comments on why you are running for Council and any issues you feel are important for the regulation of the industry

This form must be returned to the office of the Real Estate Council, Suite 900–750 West Pender Street, Vancouver, BC, V6C 2T8 not later than 4:30 pm on **Monday, April 2, 2012**. You may fax this form to 604-683-4117 or email a scanned copy to info@recbc.ca, BUT the original is still required to be submitted to the Council office **not later than Monday, April 2, 2012**.

How to Avoid Complaints and a Council Investigation

Licensees reading this issue of the *Report from Council* will find seven pages summarizing recent Council discipline decisions ordered against licensees. Many of the published decisions are the final chapter in a process that begins at the Council with the receipt of a written complaint against a licensee from an unhappy member of the public. Experience has shown that, by the time a complainant takes the time and trouble to set out their complaint in writing, they are often angry and frustrated. Further, the complainant may believe that their concerns have been trivialized by the licensee and, by this point, they are determined that the licensee will answer for their alleged professional misconduct.

A complaint may result in substantial expense and damage to reputations, with serious implications for the business of the licensee and their brokerage. Here are a few simple, proactive steps a licensee may take to avoid the time consuming, unsettling process of responding to a Council investigation.

1. Communicate clearly with clients, early and often

Complaints often arise because of a gap between a client's expectations of the services that are to be provided and those that are delivered. At the onset of a relationship, licensees must clearly describe the scope and limitations of the services they will be providing and set out the obligations of the client. Remember, unless modified, all of the duties to clients described in section 3-3(1) of the Council Rules apply.

2. Standardize your processes and procedures

Run your business like a business. Mistakes and poor or untimely communications occur when things get busy and crucial steps are missed. Standardized processes and checklists can help ensure that this does not happen to you. Licensees are considered by the courts to be trusted advisors with special expertise. Conduct yourself and your business accordingly.

The *Real Estate Services Act* and Council Rules require that you demonstrate competence and apply reasonable care and skill.

3. Remember who you work for

The answer is not "myself". You work for your clients and must act in their best interest, avoiding all conflicts with the client's interests and, in the event that a conflict does arise, must promptly and fully disclose the degree and nature of the conflict. Often, complaints arise when licensees try to serve too many masters (limited dual agency) or wear too many hats (limited dual agent while a principal to a trade) where relationships or knowledge acquired through an agency relationship preclude a licensee from having the ability to be neutral to the interests of all parties.

4. Disclose all material information and use reasonable efforts to discover relevant facts

Licensees have a positive obligation to disclose to their clients all material information respecting the real estate services, the real estate and the trade to which the services relate. It is not up to a licensee to decide what may be considered material by the client, but rather a licensee must disclose everything they know in this regard. Additionally, if you don't have information that you know would be material to the client and their decisions, you must make efforts to ascertain the facts from reliable sources. This again speaks to a licensee's competency and the need to apply reasonable care and skill.

5. There is no such thing as a "private deal" for licensees

Licensees must provide real estate services only in the name of their related brokerage plus deliver all trade records and disclosures to the brokerage. Section 2(2) of the *Real Estate Services Act* sets out that the Act applies to every licensee who provides real estate services, even if they provide the services for free or on their own be-



half. Further, section 7(3) of the Act requires that a licensee may only provide real estate services and get paid through and on behalf of the brokerage with which they are licensed. So even if you are buying or selling property "privately" that is not listed, all provisions of the Act and the Council Rules apply. Remember, rental property management, even if done for free or as a favour, is a real estate service.

6. Deal appropriately with clients' concerns as they arise

Mistakes happen. Communications may become confused or break down for any number of reasons. Clients may become anxious with a poor understanding of the elements of offers and counter-offers or other scenarios like multiple offers. Dealing with challenges and concerns appropriately as they arise, in a professional, calm, informed fashion will go a long way to fulfilling your role as a "trusted advisor with special expertise", able to refute, with confidence, any unwarranted allegation of professional misconduct.

Not all complaints can be avoided, but a mindful, pro-active approach to the problems that arise in the course of a licensee's daily business can go a long way to the successful resolution of potential controversies and complaints.

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

This article was originally included in the February 2011 Report from Council newsletter and is reprinted here for the benefit of licensees.

Disciplinary Decisions

Since the December 2011 *Report from Council* newsletter, the following actions have been taken as a result of disciplinary hearings and Consent Orders conducted by the Council.

Trading Services

Leonardo Di Francesco

ISSUE: Leonardo Di Francesco, representative, Sutton Centre Realty Ltd. dba Sutton Centre Realty, Burnaby, entered into a Consent Order with the Council that he committed professional misconduct within the meaning of section 35(1) (a) of the *Real Estate Services Act* when acting as buyers' agent with respect to the purchase of property in that he:

(a) failed to use reasonable care and skill in that he did not verify the lot size of the property on behalf of his clients before they entered into a Contract of Purchase and Sale regarding the property, contrary to sections 3-4 and 4-7 of the Council Rules; and
(b) failed to use reasonable efforts or any effort at all to discover the restrictive covenant on the title to the property before his clients signed the addendum removing all subjects to the Contract of Purchase and Sale.

RESULT: Leonardo Di Francesco was suspended for fourteen (14) days from December 21, 2011 to January 3, 2012 (inclusive), and was ordered to successfully complete the Real Estate Trading Services Remedial Education Course and pay enforcement expenses to the Council in the amount of \$1,000.00.

Michele (Mike) Rose

ISSUE: Michele (Mike) Rose, associate broker, Home & Cottage Realty Ltd. dba Royal LePage Kamloops Realty, Kamloops, entered into a Consent Order with the Council that he committed professional misconduct within the meaning of section 35(1)(a) and 35(1)(d) of the *Real Estate Services Act* in that, in the listing by way of an August 17, 2008 Multiple

Listing Contract of property including a community hall, ("Property") owned by a community recreation association, being a society registered under the Society Act ("Association"), and while acting as a limited dual agent in its sale to a corporate buyer by way of a March 9, 2009 Contract of Purchase and Sale and the buyer's assignment of its interest to a corporate assignee ("Assignee") by way of an April 21, 2009 addendum ("Assignment"), he:

(a) failed to act in the best interest of the Association when he failed to ensure all instructions to effect list price reductions to the August 17, 2008 Multiple Listing Contract, including those in December 2008 and February 2009, were properly documented and promptly processed with his brokerage and the Multiple Listing Service of his local board, contrary to sections 3-2(1), 3-3(1)(a) and (b), and 3-4 of the Council Rules; and

(b) from on or about February 24, 2009 to on or about March 13, 2009, amended documents, namely the Working With a Realtor, Multiple Listing Contract, Property Disclosure Statement, and IC + I Data Input Form ("Amended Documents") that had earlier been executed by KT and AR, on behalf of the Association, and allowed the amendments to be ratified by only one of the directors, namely KT, without deleting the signature of AR or without obtaining her fresh authorization or that of the Association.

RESULT: Michele (Mike) Rose was suspended for fourteen (14) days from February 22, 2012 to March 6, 2012 (inclusive), and was ordered to pay a discipline penalty to the Council in the amount of \$1,000.00, to successfully complete the Real Estate Trading Services Remedial Education Course, and to pay enforcement expenses to the Council in the amount of \$1,000.00.

Sandra (Sandie) Louise Scherer

ISSUE: Sandra (Sandie) Louise Scherer, representative, Brookside Realty Ltd. dba Royal LePage—Brookside Realty, Maple Ridge, entered into a Consent

Order with the Council that, while licensed with Macdonald Realty Ltd. (MplRd) dba Macdonald Realty (MplRd), Maple Ridge, she committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that, as a listing agent, she failed to use reasonable care and skill when she advertised the property as measuring 9329 square feet when the actual size of the property was considerably smaller.

RESULT: Sandra (Sandie) Louise Scherer was suspended for seven (7) days from December 14, 2011 to December 20, 2011 (inclusive), and was ordered to successfully complete the Real Estate Trading Services Remedial Education Course and pay enforcement expenses to the Council in the amount of \$1,000.00.

Hyun (Hana) Kyung Kim

ISSUE: Hyun (Hana) Kyung Kim, representative, Royal Pacific Realty Corp., Vancouver, entered into a Consent Order with the Council that she committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that she:

(a) failed to promptly notify the Council in writing of the 2009 charge and the 2010 charges, contrary to section 2-21(2) (d) of the Council Rules;

(b) failed to promptly provide a copy of the notice required under section 2-21(2) of the Council Rules to the managing broker of the related brokerage, contrary to section 2-21(4) of the Council Rules, concerning the 2010 charges; and

(c) made a false statement in an application for transfer of licence submitted to the Council in or about February 2010, contrary to section 35(1)(g) of the *Real Estate Services Act*, by failing to disclose the 2009 charge.

RESULT: Hyun (Hana) Kyung Kim was suspended for seven (7) days from February 22, 2012 to February 28, 2012 (inclusive), and was ordered to successfully complete the Real Estate Trading Services Remedial Education Course

Disciplinary Decisions, *cont'd*

and pay enforcement expenses to the Council in the amount of \$1,000.00.

Chuen Wai Michael Lo

ISSUE: Chuen Wai Michael Lo, representative, Seafair Realty Ltd. dba Sutton Group Seafair Realty, Richmond, entered into a Consent Order with the Council that he committed professional misconduct within the meaning of section 35(1) of the *Real Estate Services Act* in that he:

(a) contrary to section 7(3)(a) of the *Real Estate Services Act*, provided real estate services other than on behalf of the brokerage in relation to which he was licensed, in that he presented the offer to the seller without doing so on behalf of his brokerage;

(b) contrary to section 7(3)(a) of the *Real Estate Services Act*, provided real estate services other than on behalf of the brokerage in relation to which he was licensed, in that he held himself out to the seller as a person who provided real estate services and advised the seller of the offer, including the price, without doing so on behalf of his brokerage;

(c) contrary to section 3-2(1)(b) of the Council Rules, failed to promptly provide to his managing broker the original or a copy of trading records, in that he failed to provide a copy of the offer or the contract to his managing broker; and

(d) contrary to section 3-2(2)(a) of the Council Rules, failed to keep his managing broker informed of trading services being provided, in that he failed to inform his managing broker of the activities set out in paragraphs (a) and (b) above and failed to inform his managing broker of the offer or the contract.

RESULT: Chuen Wai Michael Lo was suspended for seven (7) days from February 22, 2012 to February 28, 2012 (inclusive), and was ordered to successfully complete the Real Estate Trading Services Remedial Education Course and pay enforcement expenses to the Council in the amount of \$1,000.00.

Harvey Gerald Goodwin

ISSUE: Harvey Gerald Goodwin, representative, Landmark Realty Corp., Ab-

botsford, entered into a Consent Order with the Council that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*:

(a) by contravening section 3-4 of the Council Rules in that he failed to ensure that the executor, who signed the contract, had the authority to transfer title to the property; and

(b) by contravening section 3-3(1)(f) of the Council Rules in that he failed to disclose to the complainants that the seller's estate had not yet received Letters Probate, and as such, the executor did not have the authority to transfer title to the property.

RESULT: Harvey Gerald Goodwin was suspended for seven (7) days from March 7, 2012 to March 13, 2012 (inclusive), and was ordered to successfully complete the Real Estate Trading Services Remedial Education Course and to pay enforcement expenses to the Council in the amount of \$1,000.00.

Jonas Haraldur Melan

ISSUE: Jonas Haraldur Melan, representative, Landmark Realty Corp., Abbotsford, entered into a Consent Order with the Council that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening section 3-4 of the Council Rules in that he failed to notice that the signature on the contract was not that of the seller, but rather that of the executor of the seller's estate.

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

Teresa May Melan

ISSUE: Teresa May Melan, representative, Landmark Realty Corp., Abbotsford, entered into a Consent Order with the Council that she committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*:

(a) by contravening section 3-4 of the Council Rules in that she failed to notice that the signature on the contract was not that of the seller, but rather that of the executor of the seller's estate; and

(b) by contravening section 5-11(2)(b) of the Council Rules in that she failed to disclose the correct amount of remuneration that the brokerage would be receiving as commission on the transaction.

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

Lester Twarog

ISSUE: Lester Twarog, representative, Crest Realty Westside Ltd. (VanW7) dba Re/Max Crest Realty Westside (VanW7), Vancouver, entered into a Consent Order with the Council that, while licensed with Crest Realty Westside Ltd. (VanBch) dba Re/Max Crest Realty Westside (VanBch), he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening sections 3-4 and 3-3(1)(h) of the Council Rules in that he failed to use reasonable efforts to discover relevant facts regarding the property in that he failed to discover the fact that the storage locker assigned to the strata unit was under a lease and would not be included with the unit.

RESULT: Lester Twarog was reprimanded, and was ordered to pay a discipline penalty to the Council in the amount of \$5,000.00, to successfully complete the Real Estate Trading Services Remedial Education Course, and pay enforcement expenses to the Council in the amount of \$1,000.00.

Robert Jeffrey Iio

ISSUE: Robert Jeffrey Iio and Robert J. Iio Personal Real Estate Corporation, River City Realty Ltd., Kamloops, while licensed as Robert Jeffrey Iio, associate broker, River City Realty Ltd., Kamloops,

Disciplinary Decisions, *cont'd*

committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he contravened section 3-4 of the Council Rules in that he mistakenly represented a BC Electric #PB 36103 in the listing information which was nonexistent and similar to the manufactured home registration number, 036103.

RESULT: Robert Jeffrey Iio was reprimanded, and was ordered to pay a discipline penalty to the Council in the amount of \$2,000.00, to successfully complete the Real Estate Trading Services Remedial Education Course, and to pay enforcement expenses to the Council in the amount of \$1,000.00.

Oliver Bert Hill Island West Realty Ltd.

ISSUE: Oliver Bert Hill, managing broker, Island West Realty Ltd., Nanaimo, entered into a Consent Order with the Council that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he contravened sections 3-1(1)(b) and 3-1(3)(a) of the Council Rules by failing to ensure that the brokerage maintained proper books, accounts and other records as necessary to ensure appropriate and timely accounting of all transactions, as required by section 25 of the *Real Estate Services Act* and sections 8-1, 8-2 and 8-3 of the Council Rules.

ISSUE: Island West Realty Ltd., Nanaimo, entered into a Consent Order with the Council that it committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that it contravened section 25 of the *Real Estate Services Act* and sections 8-1, 8-2 and 8-3 of the Council Rules by failing to maintain proper books, accounts and other records as necessary to ensure appropriate and timely accounting of all transactions.

RESULT: Oliver Bert Hill was reprimanded.

RESULT: Island West Realty Ltd. was reprimanded.

RESULT: Oliver Bert Hill and Island West

Realty Ltd. were ordered to be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,250.00.

Gregory George Carros

ISSUE: Gregory George Carros, managing broker, Max Wright Real Estate Corporation (Van) dba Sotheby's International Realty Canada (Van), Vancouver, entered into a Consent Order with the Council that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that, in submitting his application for licence renewal dated April 4, 2011, he:

(a) contravened section 35(1)(g) of the *Real Estate Services Act* by confirming that he had completed the course requirements of the Council's Relicensing Education Program prior to the expiration of his licence on May 2, 2011, and certified that the information contained in his application for licence renewal was true and complete, when he had not completed the course requirements; and (b) contravened section 2-8.1 of the Council Rules by failing to complete the course requirements of the Council's Relicensing Education Program prior to the expiration of his licence on May 2, 2011 and prior to submitting his application to the Council for renewal of his licence, and was thus not qualified to be licensed, pursuant to section 10(b)(ii) of the *Real Estate Services Act*.

RESULT: Gregory George Carros was reprimanded, and was ordered to pay a discipline penalty to the Council in the amount of \$1,000.00 and pay enforcement expenses to the Council in the amount of \$1,000.00.

Mona Heung Radelet Highland West Properties Ltd.

ISSUE: Highland West Properties Ltd., Vancouver, entered into a Consent Order with the Council in which it consented to an Order that it committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening section 7-7(1)(b) of

the Council Rules in that it failed to file an Accountant's Report with the Council by the prescribed date.

ISSUE: Mona Heung Radelet, managing broker, Highland West Properties Ltd., Vancouver, entered into a Consent Order with the Council in which she consented to an order that she committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* 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* 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.

RESULT: Mona Heung Radelet was reprimanded.

RESULT: Highland West Properties Ltd. and Mona Heung Radelet were ordered to be jointly and severally liable to pay a discipline penalty to the Council in the amount of \$1,000.00 and to be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,000.00.

Kam Chuen Lai

ISSUE: Kam Chuen Lai, representative, Westmar Realty Ltd. dba Macdonald Realty Westmar, Richmond, entered into a Consent Order with the Council that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he failed to ensure that the contract set out the completion date intended by the seller, contrary to section 3-4 of the Council Rules.

RESULT: Kam Chuen Lai was reprimanded, and was ordered to successfully complete the Real Estate Trading Services Licensing Course and to pay enforcement expenses to the Council in the amount of \$1,000.00.

Disciplinary Decisions, *cont'd*

Rickie Charles Walters

ISSUE: Rickie Charles Walters, representative, Action Realty (1991) Ltd. dba Re/Max Action Realty, Fort St. John, entered into a Consent Order with the Council that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he, as buyers' agent in the purchase of property on Preston Road in Fort St. John, by way of a September 24, 2009 Contract of Purchase and Sale, failed to promptly pay or deliver to the brokerage the deposit cheque provided by the buyers to Mr. Walters on or about October 29, 2009, in accordance with section 27(1)(a) of the *Real Estate Services Act* and sections 3-3(1)(a) and 3-4 of the Council Rules.

RESULT: Rickie Charles Walters was reprimanded and ordered to pay enforcement expenses to the Council in the amount of \$1,000.00.

Nevin Lee Low Sotheby's International Canada

ISSUE: Nevin Lee Low, associate broker, Max Wright Real Estate Corporation dba Sotheby's International Realty Canada, Vancouver, entered into a Consent Order with the Council that, while licensed as a managing broker with Max Wright Real Estate Corporation dba Sotheby's International Realty Canada, Vancouver, he committed professional misconduct within the meaning of section 35(1) of the *Real Estate Services Act* in that he, contrary to section 3-1(1)(b) of the Council Rules, failed to ensure that the business of the brokerage was carried out competently and in accordance with the Act and Council Rules, in that he allowed the brokerage to enter into an agreement to pay remuneration for real estate services to individuals without making reasonable inquiries as to whether the individuals were exempt under Regulation 506/2004 from the requirement to be licensed, in circumstances where it was not clear that the individuals were exempt from the requirement to be licensed.

ISSUE: Max Wright Real Estate Corporation dba Sotheby's International Canada, Vancouver, entered into a Consent Order with the Council that it committed professional misconduct within the meaning of section 35(1) of the *Real Estate Services Act* in that it, contrary to section 6-1(1) of the Council Rules, agreed to pay remuneration for real estate services to individuals, neither of whom were licensed under the Act, without making reasonable inquiries as to whether the individuals were exempt under Regulation 506/2004 from the requirement to be licensed, in circumstances where it was not clear that the individuals were exempt from the requirement to be licensed.

RESULT: Nevin Lee Low was reprimanded and was ordered to successfully complete the Real Estate Trading Services Remedial Education Course.

RESULT: Sotheby's International Realty Canada was reprimanded.

RESULT: Sotheby's International Realty Canada and Nevin Lee Low were ordered to be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,000.00.

Brent Ashley Couves Brenda Mary Harvey-Jones

ISSUE: Brent Ashley Couves, representative, Macdonald Realty, Kelowna, (1995) Ltd. dba Macdonald Realty Kelowna, Kelowna, entered into a Consent Order with the Council that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* when he:

(a) provided real estate services separate from the brokerage in that the website for an unlicensed entity was advertising services for which a licence was required and listed Mr. Couves as part of the team, contrary to section 7(3)(a) of the *Real Estate Services Act*;

(b) accepted remuneration related to real estate services from an entity other than from the brokerage, contrary to section 7(3)(b) of the *Real Estate Services Act*;

(c) advertised misleading information in that the website for an unlicensed entity indicated an association with the brokerage when the entity was not licensed, contrary to section 4-7 of the Council Rules.

ISSUE: Brenda Mary Harvey-Jones, representative, Macdonald Realty, Kelowna, (1995) Ltd. dba Macdonald Realty Kelowna, Kelowna, entered into a Consent Order with the Council that she committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* when she:

(a) provided real estate services separate from the brokerage in that the website for an unlicensed entity was advertising services for which a licence was required and listed Ms. Harvey-Jones as part of the team, contrary to section 7(3)(a) of the *Real Estate Services Act*;

(b) accepted remuneration related to real estate services from an entity other than from the brokerage, contrary to section 7(3)(b) of the *Real Estate Services Act*; and

(c) advertised misleading information in that the website for an unlicensed entity indicated an association with the brokerage when the entity was not licensed, contrary to section 4-7 of the Council Rules.

RESULT: Brent Ashley Couves was reprimanded and ordered to successfully complete the Real Estate Trading Services Remedial Education Course.

RESULT: Brenda Mary Harvey-Jones was reprimanded and ordered to successfully complete the Real Estate Trading Services Remedial Education Course.

RESULT: Brent Ashley Couves and Brenda Mary Harvey-Jones were ordered to be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,000.00.

Richard Kurt Otto Wittstock

ISSUE: Richard Kurt Otto Wittstock, currently unlicensed, entered into a Consent Order with the Council that, while licensed as a managing broker with Amazon Realty Ltd., Vancouver, he commit-

Disciplinary Decisions, *cont'd*

ted professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he, in submitting his application for licence renewal: (a) contravened section 35(1)(g) of the *Real Estate Services Act* by confirming that he had completed the course requirements of the Council's Relicensing Education Program prior to the expiration of his licence and certified that the information contained in his application for licence renewal was true and complete, when he had not completed the course requirements; and

(b) contravened section 2-8.1 of the Council Rules by failing to complete the course requirements of the Council's Relicensing Education Program prior to the expiration of his licence and prior to submitting his application to the Council for renewal of his licence, and was thus not qualified to be licensed, pursuant to section 10(b)(ii) of the *Real Estate Services Act*.

RESULT: Richard Kurt Otto Wittstock was reprimanded, was ordered to pay a discipline penalty to the Council in the amount of \$1,000.00, and was ordered to pay enforcement expenses to the Council in the amount of \$1,000.00.

Edward Scott Primrose

ISSUE: Edward Scott Primrose, managing broker, DTZ Barnicke Vancouver Limited, Vancouver, entered into a Consent Order with the Council that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he failed to ensure that the business of the brokerage was carried out competently and in accordance with the *Real Estate Services Act* and the Council Rules when he permitted the brokerage to provide real estate services through an individual who was not licensed, contrary to section 7(5)(a) of the *Real Estate Services Act* and section 3-1(1)(b) of the Council Rules.

RESULT: Edward Scott Primrose was reprimanded and was ordered to pay enforcement expenses to the Council in the amount of \$1,000.00.

Strata Management Services

Richard John Woolley

ISSUE: Richard John Woolley, managing broker, Atira Property Management Inc. (Sur), Surrey, entered into a Consent Order with the Council that, while licensed as a managing broker with Croft Agencies Ltd., Surrey, he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he, contrary to section 3-1(1) of the Council Rules, failed to be actively engaged in the management of his brokerage, Croft, failed to ensure that the business of Croft was carried out competently and in accordance with the Act, Regulation, Rules and Bylaws, and failed to ensure that there was an adequate level of supervision for a licensee in that he permitted breaches of the Act and the Rules by that licensee.

RESULT: Richard John Woolley was reprimanded, and was ordered to pay a discipline penalty to the Council in the amount of \$2,000.00 and pay enforcement expenses to the Council in the amount of \$1,000.00.

Donald Allan Jackson

ISSUE: Donald Allan Jackson, managing broker, Snow Valley Condo Property Rentals Inc., Fernie, entered into a Consent Order with the Council that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he contravened section 3-1(1)(b) of the Council Rules in that he permitted a person to provide real estate services on behalf of the brokerage while that person's licence was expired by permitting that person to attend strata meetings, present management reports, and be available to the public to respond to inquiries regarding the same.

RESULT: Donald Allan Jackson was reprimanded and was ordered to pay enforcement expenses to the Council in the amount of \$1,000.00.

Gilbert Joseph Gutfreund Robert Arthur Loten

ISSUE: Gilbert Joseph Gutfreund, representative, Advantage Property Management Ltd. dba Sutton Advantage Property Management, Victoria, entered into a Consent Order with the Council that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he, while licensed with various related brokerages, in the provision of strata management services to a strata corporation client, he failed to act in the best interest of the strata corporation and only within the scope of authority given by that strata corporation when he caused the strata corporation's special levy money allocated as a building improvement fund to be spent on shortfalls in operating fund revenue without the strata corporation's authorization.

ISSUE: Robert Arthur Loten, managing broker, Advantage Property Management Ltd. dba Sutton Advantage Property Management, Victoria, entered into a Consent Order with the Council that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he, while acting as a managing broker with various related brokerages, in the provision of strata management services to a strata corporation client, failed to ensure that Mr. Gutfreund acted in the best interest of the strata corporation and only within the scope of authority given by the strata corporation when Mr. Gutfreund caused the special levy money allocated as a building improvement fund to be spent on shortfalls in operating fund revenue without the strata corporation's authorization and failed to ensure that Mr. Gutfreund acted in accordance with the instructions of the strata corporation to open a separate trust account for special levy money being held by the related brokerage on behalf of the strata corporation, contrary to section 6(2) of the *Real Estate Services Act*.

RESULT: Gilbert Joseph Gutfreund was reprimanded and was ordered to successfully complete the Strata Management Remedial Education Course.

Disciplinary Decisions, *cont'd*

RESULT: Robert Arthur Loten was reprimanded.

RESULT: Gilbert Joseph Gutfreund and Robert Arthur Loten were ordered to be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,000.00.

Christopher James Kyle Kyle Properties Ltd.

ISSUE: Christopher James Kyle, managing broker, Kyle Properties Ltd., Vancouver, entered into a Consent Order with the Council that he committed professional misconduct within the meaning of section 35(1) of the *Real Estate Services Act* in that he, contrary to one or more than one of sections 3-3(1)(a) and 3-3(1)(c) of the Council Rules, failed to act in the best interests of his client and failed to act only within the scope of authority given by the client, in that he withdrew or caused to be withdrawn from the trust account of the complainant the new fee for the months of January 2009 to and including October 2009 when the complainant had not authorized the new fee in writing.

ISSUE: Kyle Properties Ltd., Vancouver, entered into a Consent Order with the Council that it committed professional misconduct within the meaning of section 35(1) of the *Real Estate Services Act* in that it, contrary to section 5-1(1)(a) of the Council Rules, failed to have a written service agreement between the brokerage and the client, in that the brokerage and the complainant did not have a signed written service agreement for the provision of strata management services.

RESULT: Christopher James Kyle was reprimanded and was ordered to successfully complete the Strata Management Remedial Education Course.

RESULT: Kyle Properties Ltd. was reprimanded.

RESULT: Christopher James Kyle and Kyle Properties Ltd were ordered to be jointly and severally liable to pay enforcement

expenses to the Council in the amount of \$1,000.00.

Rental Property Management Services

Tarlok (Terry) Singh Gidda

ISSUE: Tarlok (Terry) Singh Gidda, associate broker, Homelife Glenayre Realty Company Ltd. (Miss), Mission, entered into a Consent Order with the Council that, while licensed as managing broker with Paris Realty Ltd. dba Royal LePage Fraser Valley–Aldergrove, Abbotsford and as managing broker with Ready Realty Ltd. dba Royal LePage Fraser Valley Realty, Mission, he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he:

(a) contravened section 3-1(1) and/or section 3-1(3) of the Council Rules in that he failed to ensure that the brokerage kept proper books and records with respect to the handling of the security deposit with respect to the said tenants as required by section 25 of the *Real Estate Services Act* and section 8-2 of the Council Rules;

(b) contravened section 3-3(1)(b) of the Council Rules and section 30(1)(g) of the *Real Estate Services Act* in that he failed to act in accordance with the lawful instructions of the said owners by failing to withdraw security deposit monies in the amount of \$1,000.00 from the brokerage trust account in accordance with the instructions of the said owners to whose credit the money was deposited when the said owners terminated their service agreement with the said brokerage; and

(c) contravened section 3-1(1) of the Council Rules in that he failed to be actively engaged in the management of his related brokerage, to ensure that the business of the brokerage was carried out competently and in accordance with the *Real Estate Services Act*, Regulation, Rules and Bylaws and failed to ensure that there was an adequate level of supervision for related associate brokers and representatives and for employees and others to perform their duties on behalf of the brokerage, when he failed to ensure that the said security deposit

received from the tenants was accounted for and returned to the owners after termination of the service agreement.

RESULT: Tarlok (Terry) Singh Gidda, currently licensed as an associate broker, was ordered not to apply to be licensed as a managing broker for a period of one year from the date of the Order or until January 12, 2013. He was also ordered to successfully complete the Real Estate Trading Services Remedial Education Course and to pay enforcement expenses to the Council in the amount of \$1,000.00.

Irene Nga Lin Lau

ISSUE: Irene Nga Lin Lau, managing broker, Goodview Realty Inc. dba Regent Park (Supreme) Realty, Vancouver, entered into a Consent Order with the Council that she committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that she:

(a) failed to act in the best interest of her client and failed to act with reasonable care and skill, contrary to sections 3-3(1)(a) and 3-4 of the Council Rules;

(b) contrary to section 5-1(5)(a) of the Council Rules, failed to ensure that her brokerage's written service agreement for rental property management services included a provision for the following:

(i) the circumstances in which the agreement may be terminated by either or both the client and the brokerage;

(ii) the scope of authority of the brokerage or a related licensee when acting on behalf of the owner, including any authority to (a) sign cheques or make disbursements on behalf of the owner, and (b) enter into contracts on behalf of the owner;

(iii) the timing, frequency and nature of accounting statements and other records to be provided by the brokerage to the owner;

(iv) how security deposits, pet damage deposits and other deposits are to be dealt with; and

(v) a description of the records to be kept by the brokerage on behalf of the owner;

(c) failed to act in accordance with the lawful instruction of her clients and acted outside of the scope of authority given by the clients when she continued to provide

Disciplinary Decisions, *cont'd*

rental property management services after July 8, 2009, the date when the clients terminated her brokerage's written services agreement for rental property management services, contrary to section 3-3(1)(c) of the Council Rules; and (d) failed to ensure that her brokerage had a written service agreement for the provision of rental property management services on behalf of her clients from the date after the clients terminated the original services agreement from July 8, 2009 to September 2009, contrary to section 5-1(1)(b) of the Council Rules.

RESULT: Irene Nga Lin Lau was reprimanded, and was ordered to pay a discipline penalty to the Council in the amount of \$1,000.00, successfully complete the Rental Property Management Remedial Education Course, and pay enforcement expenses to the Council in the amount of \$1,000.00.

Erik Kurtis Krusee

ISSUE: Erik Kurtis Krusee, currently unlicensed, while licensed as a representative with Duttons & Co. Real Estate Ltd., Victoria, entered into a Consent Order with the Council that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening section 3-4 of the Council Rules in that he:

(a) altered a security deposit reconciliation form that had been signed by the tenant by adding an amount of \$230.00 for repairs to a wall and floor without obtaining the consent of the tenant;

(b) represented in the arbitration evidence statement that he had prepared that the full security deposit plus interest had been returned to the tenant, which he knew or ought to have known was untrue or misleading as the brokerage held the balance of the security deposit;

(c) in the list of damages he prepared for the arbitration, he listed three items as invoices when only the wall damage was an invoice and the other two were only quotations; and

(d) altered the condition inspection report after it was signed by the tenant by filling in the section under "End of Tenancy" by adding "damage to rental unit or residential property for which the tenant is responsible" without the consent of the tenant.

RESULT: Erik Kurtis Krusee was suspended for twenty-one (21) days upon licence reissuance and was ordered, as a condition of continued licensing, to successfully complete the Rental Property Management Remedial Course, and, as a further condition of continued licensing, was ordered to pay enforcement expenses to the Council in the amount of \$1,000.00. ■

Feedback?

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

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

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

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