



Report from Council

June 2005 Volume 40, No. 7

The Year In Review

During the past year, there have been a number of important items reported in previous *Reports from Council*, including the introduction of the new *Real Estate Services Act*. Given their significance, a number of them are highlighted here again for the benefit of all licensees. Please note that further information on these subjects can be found on the Council's page on the RealtorLink™ website at www.realtorlink.ca.

Real Estate Services Act (RESA)

On January 1, 2005, the *Real Estate Services Act* came into effect. Details with respect to the expanded role of Council, including its bylaw and rule-making authority, together with brokerage accounting requirements, the introduction of the Real Estate Special Compensation Fund, and changes to the Council's disciplinary procedures were outlined in the December 2004 Special Report to Licensees. Also contained in that report was information with respect to the Council's new forms and publications and fees.

The February 2005 2nd Special Report to Licensees highlighted important sections of the Council Rules, including, under Part 3, the general responsibility of licensees, which includes managing broker supervision and the requirement for representatives to provide their managing brokers with all the written disclosures required under Part 5 of the

Council Rules. Part 5 of the Rules details licensees' relationships with principals and parties, including the requirement under Section 5-9, which requires licensees to disclose that they are licensed when acquiring or disposing of any interest in real estate. This part also requires, under Section 5-11 of the Rules, the disclosure of the source, amount and other particulars of remuneration that a licensee anticipates receiving that is not to be paid directly by the licensee's client. An extensive discussion of this section of the Council Rules was contained in the February 2005 *Report from Council*.

The 2nd Special Report to Licensees also articulated policy statements covering the payment of licensee remuneration (which was updated in the May 2005 3rd Special Report to Licensees) and the education re-qualification policies for both representatives and managing brokers.

The 3rd Special Report to Licensees advised that the Council had extended the transition provisions that allowed for compliance with certain aspects of the Rules from June 30, 2005 to January 1, 2006. It also highlighted a number of housekeeping amendments to the Council Rules.

Licensees are encouraged to review each of the Special Reports to Licensees, which can be found in the Latest News section on the

Council's home page at www.recbc.ca.

Licensee - Client Guidelines Respecting Offers and Counter-Offers

The real estate market continues to be very active in many parts of the province. In order to assist licensees, the Council developed guidelines concerning the preparation, presentation, and negotiation of offers and counter-offers. These guidelines were circulated with the August 2004 *Report from Council* as Practice Points #6.

The Council continues to believe that informed clients are better prepared to face the complex and sometimes frustrating situations that may develop during the negotiation process in an active market. Discussing the Council guidelines with sellers and buyers at an early stage will help them understand what may occur and the options they may have in given situations.

...Continued on page 3

In this Issue:

- Year in Review
- Council Election Results
- Statistics
- Advertising Must Contain Name of Related Brokerage
- A Warning About Conducting Unlicensed Lotteries
- All Licensees are "Engaged by a Brokerage"



Real Estate Council of
British Columbia

900 - 750 West Pender Street
Vancouver, B.C. V6C 2T8
Phone 604-683-9664
Toll-free 1-877-683-9664
Fax 604-683-9017
info@recbc.ca
www.recbc.ca
Office Hours:
Monday-Friday 8:30a.m. - 4:30p.m.

REAL ESTATE COUNCIL OF B.C.

CHAIR
ROSEMARY BARNES
VICE-CHAIR
DOUGAL SHEWAN
EXECUTIVE OFFICER
ROBERT O. FAWCETT

COUNCIL MEMBERS
ARLENE A. BUTLER
CYNTHIA A. CHEN
ROBERT F. CLARKE
ALLAN CORBETT
MARSHALL COWE
JOHN FINLAYSON
MARVIN FRIESEN
ABDUL R. GHOURI
PHILIP L. JONES
DANNY LEUNG
WILLIAM H. LIM
DAVID K. MIO
RAMESH RIKHI
SATNAM SIDHU
WAYNE STRANDLUND
JUDI WHYTE
MICHAEL ZIEGLER

STATISTICS (JUNE 2005)

REPRESENTATIVES: 12,513
ASSOCIATE BROKERS: 2,030
MANAGING BROKERS: 1,205
BROKERAGES: 1,239

Role of the Council

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

Report from Council

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

For further information, contact:
Anthony Cavanaugh,
Communications Officer
acavanaugh@recbc.ca

Printed on recycled paper

A Note From the Chair

My term as Council Chair ends on June 30, 2005 but I will continue to serve for a further year as one of three managing broker/associate broker members from the County of Westminister. I look forward to continuing to serve on Council in that capacity.

You will note elsewhere in this Report that the terms of Laurie Creak, formerly of Prince George, Marvin Friesen of Vernon and David Mio of Smithers, come to an end on June 30, 2005 as well. They have contributed significantly over the years they have been involved with Council and we will miss them.

We look forward to working with our new public member Danny Leung of Richmond, our newly appointed rental property/strata management representative William (Bill) Brown of Victoria as well as our newly elected members Keith Bevington of Penticton, Jim McNeal of Prince George and Ann Petrone of Kelowna.

The introduction of the new *Real Estate Services Act* (RESA) has made for what no doubt has been one of the busiest years, both for Council members and staff. Like previous Council Chairs, I have found my role as Chair both interesting and rewarding. I have enjoyed the opportunity of meeting many licensees throughout the province

during my term.

As has been our practice, there are several people and organizations that I would like to thank for their involvement in the introduction of RESA and their continued assistance in helping the Council in fulfilling its mandate –

- Finance Minister Colin Hansen, former Finance Minister Gary Collins and the staff at the Financial and Corporate Sector Policy Branch in Victoria;
- Superintendent of Real Estate Al Clark, Deputy Superintendent of Real Estate John Nunez, former Deputy Superintendent of Real Estate Jay Mitchell and the rest of the staff at the Financial Institutions Commission;
- The British Columbia Real Estate Association (BCREA) and its member boards/associations. Past President Gordon Maroney and Executive Officer Robert Iaing were extremely helpful with the introduction of RESA. I would also like to extend my personal congratulations to Dave Barclay on his election as President;
- BCREA staff members June Piry, Director of Education, Kim Spencer, Director of Member Services and Norma Miller, Director of Communications;
- David Moore, Director, and Kevin Arndt, Manager, Licensing Education at the Real Estate Division, Sauder School of Business, University of



Rosemary Barnes

British Columbia;

• Vice-Chair Dougal Shewan and the members of Council re-elected and those who will be continuing to serve next year. It has been a pleasure to work with each and every one of them.

I would also like to acknowledge the Council staff for their continued commitment to serve both consumers and real estate licensees in an efficient and effective manner. The last year has been challenging for them with the introduction of RESA, the implementation of a new licensing system and preparation for the licensing of strata managers in 2006. However, as in the past, they have risen to the occasion for which I thank them on your behalf.

Finally, I would like to thank Council's Executive Officer, Robert Fawcett, for providing assistance, not only to me, but to all of Council and to the real estate industry as a whole, over the past year.

*On behalf of Council,
Rosemary Barnes, Chair*

Office Closures

The Council office will be closed on Friday, July 1, 2005 for Canada Day and Monday, September 5, 2005 for Labour Day.

The Year in Review *(Continued from Cover)*

Acting as a Limited Dual Agent

When acting as a dual agent, a licensee must first obtain the informed consent of both parties to the trade in real estate before doing so. "Informed" means that the licensee must disclose to both parties in a timely manner:

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

"Consent" means that on the basis of the information above, both parties agree to the licensee acting as a dual agent.

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

Acting as a dual agent requires that the licensee act in a neutral, impartial, and objective manner. There can be no advocacy on behalf of either party. As a result, it is sometimes impossible for a licensee to act as a dual agent because of the relationship they already have with one of the parties (e.g. when involved with a family member or when a licensee has developed a relationship with a developer and is marketing a project on behalf of that developer).

Licensees are encouraged to review the full text of the article entitled "Acting as a Limited Dual Agent" as found in the February 2005 *Report from Council*. Licensees are also reminded that they should discuss with their managing brokers any potential conflicts of interest **before** entering into a dual agency relationship.

New Guidelines for Unlicensed Assistants

Circulated with the October 2004 *Report from Council* was Practice Points #7, which contained new guidelines on the activities that unlicensed assistants may perform. An unlicensed assistant may:

- answer the telephone, take messages, and forward calls to a licensee
- schedule appointments for a licensee, but this does not include making phone calls, telemarketing, or performing other activities to solicit business on behalf of a licensee
- submit listings and changes as approved by a licensee to a multiple listing service
- unlock a property in order that it may be shown by a licensee
- act as a courier to deliver documents, pick up keys, etc.

For a full list of activities, please refer to Practice Points #7.

All Licensees are "Engaged by a Brokerage"

Section 7 of the *Real Estate Services Act* (RESA) states that "a managing broker, associate broker or representative must be:

- (a) licensed in relation to a single brokerage, and
- (b) engaged by that brokerage."

The definition of "engaged" under RESA means "a person who is

- (a) a licensee employed by the

brokerage to provide real estate services on its behalf, or

- (b) a licensee who is acting in an independent contractor relationship with the brokerage to provide real estate services on its behalf;"

Section 3-1 of the Council Rules requires that managing brokers ensure that there is an adequate level of supervision for associate brokers and representatives.

The level of supervision required is the same regardless if the licensee is employed by the brokerage or acting in an independent contract relationship with the brokerage.

All licensees, but particularly those who are acting in an independent contractor relationship with a brokerage, must understand and remember that the managing broker is required to supervise the activities of all licensees licensed with the brokerage.

Strata Management Licensing Information Coming in July

As licensees are aware, anyone who engages in the provision of strata management services will require licensing through the Real Estate Council beginning January 1, 2006. The Council is in the process of

finalizing guidelines with respect to this licensing requirement.

Further information, including an amended version of the Council Rules

reflecting strata management requirements, will be made available in July by way of a Special Report to Licensees. In addition, the Council will post information on its website at www.recbc.ca.

Statistics

Education

For the fifth year in a row enrollments in the Trading Services and Property Management Licensing Courses have increased. This, no doubt, is a result of the continued market activity throughout the various parts of the province, but in particular, the Lower Mainland.

Year	First Half	Second Half	Total
1995/96	1,097	374	1,471
1996/97	518	1,170	1,688
1997/98	489	361	850
1998/99	407	343	750
1999/00	355	335	690
2000/01	311	380	691
2001/02	630	918	1,548
2002/03	1,168	1,520	2,688
2003/04	2,067	2,278	4,345
2004/05	1,973	2,454	4,427

Licensing

The figures shown below indicate that there was a 9.3 percent increase in the number of licensees over the past year. This is the third straight year that this has occurred and reflects less individuals leaving the industry and more new entrants as indicated in the licensing course statistics.

Year	Managing/ Associate Brokers*	Representatives	Total	% Change
1995/96	3,793	13,747	17,540	-7.7
1996/97	3,944	13,206	17,150	-2.2
1997/98	3,835	12,159	15,994	-6.7
1998/99	3,677	10,889	14,566	-8.9
1999/00	3,523	10,233	13,756	-5.6
2000/01	3,427	9,393	12,820	-6.8
2001/02	3,378	9,390	12,768	-0.4
2002/03	3,375	9,985	13,360	+4.6
2003/04	3,358	11,033	14,391	+7.7
2004/05	3,240	12,487	15,727	+9.3

*Includes Sole Proprietors

Office Audits and Inspections

The Council has been performing office audits and records inspections since 1967. The mandate of the Council is to ensure that all licensed brokerages in the province have proper controls in place to protect trust monies at all times. The objective of these inspections is to provide constructive feedback to the brokerage and indicate any deficiencies in the office operations and books/records as required by the *Real Estate Services Act*.

Year	1 st Year or Procedural Inspection	Priority Inspections & Follow-up	Total Brokerage Inspections
2001/02	78	99	177
2002/03	95	106	201
2003/04	72	76	148
2004/05	130	67	197

Complaints

As indicated in the following statistics, the number of complaints received at the Council continues to be over 300 for the third year in a row. While the number of complaints continues to be high, the complexity of complaints has also increased dramatically over the past few years. In addition to the figures noted below, there are over 40 hearings pending.

Year Ended May 31	Complaints Received	Hearings Held	Consent Orders*	Qualification Hearings**	Letters of Warning ***	Dismissed or Withdrawn	Admin. Closed****
1999/00	160	29	-	4	38	67	-
2000/01	195	40	-	7	43	69	-
2001/02	193	11	10	3	36	85	-
2002/03	311	14	21	4	29	39	117
2003/04	308	21	31	7	32	20	102
2004/05	345	6	46	4	11	30	147

* In the event that a licensee wishes to admit to the alleged breaches of the *Real Estate Services Act*, Regulations or Council Rules and agrees to the stipulated penalty and costs, a Consent Order arrangement may be entered into. In this type of arrangement, an Agreed Statement of Facts would also be required.

** Qualification hearings are held when there is some question as to whether or not an individual is suitable to become licensed under the *Real Estate Services Act*.

*** Letters of warning are issued on files where there is an indication of a minor or technical breach of the *Real Estate Services Act* which did not cause harm to any consumer.

**** A complaint file may be closed administratively at any stage where it is found that:

- the Council has no jurisdiction over the matter (i.e. including matters that are not related to a licensee providing real estate services, as that term is defined in the *Real Estate Services Act*);
- there is no evidence of professional misconduct or conduct unbecoming a licensee;
- the complaint has been dealt with to the Complainant's and the Council's satisfaction by the brokerage or licensee;
- the complaint has been withdrawn.

Discipline

The following figures reflect the penalties agreed to by the Consent Order Review Committee or Hearing Committees over the past six years. The overall number of disciplinary penalties increased dramatically compared with previous years. It is also interesting to note that the number of licence suspensions continues its upwards trend, reflecting the seriousness of the breaches of the real estate legislation. As a result of the Council's increased regulatory authority under the new *Real Estate Services Act*, the Council can now make an order for the immediate suspension of a licence if it is in the public interest to do so. The first of these types of orders was issued in March of 2005.

Year Ended May 31	Licences Cancelled	Suspensions in the Public Interest	Licences Suspended	Licensees Reprimanded	Total
1999/00	0	-	19	8	27
2000/01	4	-	16	20	40
2001/02	3	-	7	16	26
2002/03	1	-	18	30	49
2003/04	0	-	19	23	42
2004/05	3	1	35	24	63

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 that the **name of the related brokerage (e.g. ABC RealtySurrey Ltd.) 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 Rules. In that regard, in accordance with section 2-23 of the 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.**

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, 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.

In assessing compliance with section 4-6(2) 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. It is further recommended that the brokerage's phone number be included.

Notice to Brokerages for Accountant Report Filings for Fiscal Year Ends After December 31, 2004

As managing brokers are already aware, there is a new Accountant's Report form for all filings beginning January 1, 2005. The form is very similar to the previous Form 1 Accountant's Report under the former Real Estate Act.

However, an important change to note is that under Part A of the Accountant's Report "*All brokerage trust accounts, commission trust accounts and other savings institutions accounts of the brokerage opened, closed or maintained during the*

fiscal year" must be disclosed. This is a change from the Form 1 Accountant's Report under the former *Real Estate Act* which required "*All trust accounts of the Agent during the period.*"

Reminder About Council Licensing Forms

As licensees are aware, the *Real Estate Services Act* took effect January 1, 2005. As a result, the Council changed all of its forms to reflect changes in the Act. If your brokerage is still using forms that were in existence prior to January 1, 2005, please download the newer forms available on the Council's website at www.recbc.ca.

The Council's website continues to be a valuable resource for both licensees and the public averaging over 500,000 page hits a month. In addition to finding all of Council's forms online, licensees will find a useful Licensee Search function that provides real-time information about the status of licensees registered with each brokerage including

licence expiry dates. Licensees will also find copies of the *Real Estate Services Act*, Regulation, Council Rules and Bylaws on the main page of the website. In addition, licensees will find a list of useful frequently asked questions relating to the new real estate legislation.

A Warning About Conducting Unlicensed Lotteries

As a result of a recent complaint to the Council, licensees who engage in the practice of holding raffles or draws for marketing purposes need to be aware of the following information provided by the Gaming Policy Enforcement Branch of the provincial government.

Raffles and draws are defined in the *Criminal Code* as a lottery and game of chance under section 206. It is an offence under that section to conduct such activity unless it is authorized by the Lieutenant Governor in Council of a province.

Through delegated authority, the Gaming Policy and Enforcement Branch, Ministry of Public Safety and Solicitor General for the province of BC, issues gaming event licences to qualified applicants. Generally, a qualified

applicant must be recognized as a charitable institution or group. Lotteries held for promotional purposes do not qualify for licences.

There are three elements which comprise to form a lottery. 1) payment of consideration 2) chance or mixed chance and skill, and 3) prize or reward. As an example, if a real estate licensee was to offer a chance to enter a draw to win a vacation trip to the first hundred purchasers of condominiums in a development he or she is marketing, such a draw would be in contravention of section 206 of the *Criminal Code*.

The requirement to purchase a condominium would fall under the first element, being the consideration to qualify

for entry. The drawing of a winner's name would fulfill the second element, that of chance. The third element would obviously be the trip. In order to avoid running afoul of section 206, the foregoing draw would have to be open to entry to anyone who wished the opportunity. In other words, they would not be required to purchase a condominium to have their names entered in the draw. The contravention of section 206 of the *Criminal Code* is an indictable offence which imposes a maximum sentence of incarceration for up to two years.

Licensees with questions or requiring further information about qualifying for a gaming licence in relation to raffles or draws may visit the Gaming Policy Enforcement Branch at www.pssg.gov.bc.ca/gaming.

Consumer Booklets Available

The Council reminds licensees that its Buying/Selling a Home in BC booklets are available for purchase. The booklets provide consumers with important information about the buying and selling process, including home ownership options, financing information, an explanation of agency relationships, searching for a home, the offer and counter-offer process, information about deposits, closing costs and other critical information.

The booklets are available from most real estate boards/associations throughout the province as well as from the Council office. In order to cover basic printing expenses, the price of the booklets ordered from the Council office is \$1.00 each including taxes. The Council has also posted copies of the booklets on its website at www.recbc.ca

Licensees wishing to order copies of the booklets from the Council must either submit a cheque made payable to the Real Estate Council of BC or complete the Credit Card Payment form available on the Council's website. For further information, please contact Anthony Cavanaugh at the Council office at 604-683-9664 or toll-free 1-877-683-9664.



Council Election Results

Each year, the term of eight or nine Council members expires and elections are held to fill the vacancies. The following have been elected for a two-year term commencing July 1, 2005.

New Council Members

County of Yale (managing/associate broker)
Keith Bevington, Re/Max Front Street Realty, Penticton (licensed for 21 years)

Combined Counties of Cariboo and Prince Rupert (managing/associate broker)
Jim McNeal, Royal LePage Prince George, Prince George (licensed for 28 years)

Combined Counties of Westminster, Kootenay, Yale, Cariboo and Prince Rupert (representative)
Ann Petrone, Re/Max Kelowna, Kelowna (licensed for 15 years)

Rental Property/Strata Management Member Representative
William Brown, Brown Bros. Agencies Limited, Victoria (licensed for 31 years)

Re-elected Council Members

County of Vancouver (managing/associate brokers)
Cynthia A. Chen, Macdonald Realtors Westmar, Richmond (licensed for 16 years)
Judi Whyte, Prudential Sussex Realty, West Vancouver (licensed for 28 years)

County of Westminster (managing/associate broker)
Marshall Cowe, Royal LePage Coronation West Realty, Coquitlam (licensed for 33 years)

County of Victoria (managing/associate broker)
Wayne Strandlund, Fisgard Asset Management Corp., Victoria (licensed for 36 years)

County of Kootenay (managing/associate broker)
Philip Jones, Royal LePage East Kootenay Realty, Cranbrook (licensed for 29 years)

County of Vancouver (representative)
Abdul Ghouri, Royal Pacific Realty (Kingsway) Ltd., Vancouver (licensed for 21 years)

The following Council members have a further year to serve

County of Vancouver (managing/associate brokers)
Arlene Butler, Re/Max Select Properties, Vancouver (licensed for 35 years)
Allan Corbett, NAI Goddard & Smith, Vancouver (licensed for 32 years)
Satnam Sidhu, Re/Max Crest Realty, North Vancouver (licensed for 26 years)

County of Westminster (managing/associate brokers)
Rosemary Barnes, Park Georgia Realty Ltd., Coquitlam (licensed for 29 years)

Dougal Shewan, Royal LePage – Wolstencroft Realty, Langley (licensed for 28 years)

County of Victoria (managing/associate broker)
Michael Ziegler, Newport Realty Ltd., Victoria (licensed for 29 years)

County of Nanaimo (managing/associate broker)
John Finlayson, Osborne Realty Services (1992) Ltd. (licensed for 22 years)

Combined Counties of Victoria and Nanaimo (representative)
Bob Clarke, Coast Realty Group (Campbell River) Ltd. (licensed for 35 years)

The three public members are Ramesh Rikhi of Penticton, William Lim of Vancouver and Danny Leung of Richmond.

Retiring from Council are

Laurie Creak, representative member for the combined Counties of Westminster, Kootenay, Yale, Cariboo and Prince Rupert after nearly 6 years of service.

Marvin Friesen, managing/associate broker member for the County of Yale after 4 years of service.

David Mio, managing/associate broker member for the combined Counties of Cariboo and Prince Rupert after 8 years of service.

Disciplinary Decisions

Since the April 2005 *Report from Council* newsletter, the following actions have been taken as a result of disciplinary hearings and Consent Orders conducted by the Council.

➤ **Complaint:** Breach of section 15(1) and 16(2) of the *Real Estate Act* and sections 9.12, 12.01 of Regulation 75/61 under the *Real Estate Act*/Negligence

■ **Issue:** First Trail Real Estate Ltd. dba Coldwell Banker First Trail Real Estate, Trail, breached section 9.12 of Regulation 75/61 under the *Real Estate Act* in that
(i) it allowed two unlicensed persons to undertake property management services for which a licence was required under the *Real Estate Act*,
(ii) breached section 15(1) of the *Real Estate Act*

Act and section 12.01 of Regulation 75/61 under the *Act* in that it failed to keep proper and up to date books, records and accounts for all property management transactions;
(iii) failed to properly reconcile all property management trust accounts on a monthly basis.

■ **Issue:** John David McConnachie,

managing broker, Coldwell Banker First Trail Real Estate, Trail, was negligent within the meaning of section 9.12 of Regulation 75/61 under the *Real Estate Act* in that he:

(i) permitted an unlicensed person to undertake property management services for which a licence was required under the *Real Estate Act*;

(ii) permitted another unlicensed person to undertake property management services for which a licence was required under the *Real Estate Act*;

(iii) failed to ensure that the agent kept proper and up to date books, records and accounts for all property management transactions;

(iv) failed to ensure that the agent prepared and reviewed monthly reconciliations of all property management trust accounts in a timely manner;

(v) failed to be in active charge of the property management business of the agent.

■ **Issue:** Jonathan Dale Mitchell, currently unlicensed, who, while licensed with Coldwell Banker First Trail Real Estate, Trail, (i) was negligent within the meaning of section 9.12 of Regulation 75/61 under the *Real Estate Act* in that he permitted an unlicensed person to undertake property management services for which a licence was required under the *Real Estate Act*;

(ii) breached section 16(2) of the *Real Estate Act* by failing to pay or deliver to his agent all money held for or received on behalf of property management clients in accordance with section 16(2) of the *Real Estate Act*.

✍ **Penalty:** First Trail Real Estate Ltd. dba Coldwell Banker First Trail Real Estate, Trail, was reprimanded.

John David McConnachie was reprimanded and as a condition of continued licensing he was liable for the payment of his share of legal costs to the Council in the sum of \$2,168.75.

Jonathan Dale Mitchell would not be permitted to be licensed for a period of one year from the date of the decision or until April 5, 2006 and should he apply to be licensed, his application will be referred to a qualification hearing. As a condition of re-licensing, Mr. Mitchell is required to pay his share of the legal costs to the Council in the sum of \$3,405.10.

➤ **Complaint:** Breach of section 31(1)(c) of the *Real Estate Act*/Misconduct

■ **Issue:** Kevin William Barfoot, currently unlicensed who, while licensed as a representative with Coast Realty Group Ltd., Nanaimo, misconducted himself within the meaning of section 31(1)(c) of the *Real Estate Act* in that he undertook activities for which a real estate licence was required while his licence was under suspension by the Council.

✍ **Penalty:** Kevin William Barfoot was suspended for eight (8) months from the date of surrender of his licence or until November 3, 2005 for the breach described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Mr. Barfoot and a Consent Order was issued. During the term of his suspension, he is not permitted to work as an unlicensed assistant for anyone. In addition, as a condition of re-licensing, he is required to successfully complete Chapter 2 (*Real Estate Services Act*) of the Real Estate Trading Services Licensing Course and to pay costs to the Council in the amount of \$500.

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

■ **Issue:** Randal Herbert Forbes, managing broker, Coast Realty Group Ltd., Nanaimo, was negligent within the meaning of section 9.12 of Regulation 75/61 under

the *Real Estate Act* in that he failed to sufficiently supervise all of the transactions handled by another licensee, for Kevin William Barfoot, while Barfoot's licence was under suspension, in order to ensure that Barfoot was only acting as an unlicensed assistant in the said transactions and not acting as a licensee.

✍ **Penalty:** Randal Herbert Forbes was reprimanded for the breach described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Mr. Forbes and a Consent Order was issued. In addition, as a condition of continued licensing, he is required to successfully complete Chapter 2 (Mandatory Requirements Under the *Real Estate Services Act*) of the Brokers Licensing Course and to pay costs to the Council in the amount of \$500.

➤ **Complaint:** Breach of section 31(1)(c) of the *Real Estate Act*/Misconduct

■ **Issue:** Julie Urquhart, associate broker, Angell, Hasman & Associates, West Vancouver, misconducted herself within the meaning of section 31(1)(c) under the *Real Estate Act*, in that she signed the assignee's name and initials to the Assignment of Contract of Purchase and Sale without the knowledge or consent of the assignee.

✍ **Penalty:** Julie Urquhart's licence was suspended for thirty (30) days, from March 23 to April 21, 2005 (inclusive) for 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 Urquhart, and a Consent Order was issued. In addition, as a condition of continued licensing, she is required to successfully complete Chapter 2 (Mandatory Requirements Under the *Real Estate Services Act*) and Chapter 3 (Business Standards) of

the Broker's Licensing Course and pay legal costs to the Council in the amount of \$500.00.

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

■ **Issue:** Jolanta Antonina Teszka, representative, Homelife Classic Realty Ltd., Maple Ridge, while licensed as a representative with Macdonald Realtors Ford Realty, Maple Ridge, was negligent within the meaning of section 9.12 of Regulation 75/61 under the *Real Estate Act* in that she

(i) failed to advise the listing salesperson in a timely manner that the deposit had not been received within twenty-four hours after acceptance of the said contract by the sellers in accordance with the said contract;

(ii) failed to stipulate in the said contract as to which trust account the said deposit was to be paid.

✍ **Penalty:** Jolanta Antonina Teszka was suspended for thirty (30) days, from June 15, 2005 to July 14, 2005 inclusive, for negligence as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Ms. Teszka, and a Consent Order was issued. In addition, as a condition of continued licensing, she is required to successfully complete Chapter 2 (*Real Estate Services Act*) of the Real Estate Trading Services Licensing Course, enroll in and attend the first available Legal Update Course and to pay legal costs in the amount of \$500.00.

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

■ **Issue:** Debbie Anne Kozari, representative, Royal LePage Locations West Realty, Penticton, was negligent within the meaning of section 9.12 of Regulation 75/61 under the *Real Estate Act* in that she:

(i) failed to look after the best interests of

the seller and the buyer by ensuring a valid and subsisting contract was put into effect;

(ii) failed to ensure a building contract was drafted in sufficient detail to define the rights and obligations of the buyer and seller;

(iii) failed to recommend to the buyers to seek independent advice, including independent legal advice, prior to the execution of the contract by all parties; and

(iv) failed to ascertain that the seller was not the registered owner of the property or the terms under which the seller could convey title to the buyer.

✍ **Penalty:** Debbie Anne Kozari was suspended for fourteen (14) days from June 8, 2005 to June 21, 2005 (inclusive) for negligence as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Ms. Kozari and a Consent Order was issued. In addition, as a condition of continued licensing, she is required to successfully complete Chapter 2 (*Real Estate Services Act*) and Chapter 11 (Contracts for Real Estate Transactions) of the Real Estate Trading Services Licensing Course and to pay costs to the Council in the amount of \$500.

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

■ **Issue:** Richard Wayne Appleton, representative, Royal LePage Locations West Realty, Penticton, was incompetent within the meaning of section 9.12 of Regulation 75/61 under the *Real Estate Act* in that he:

(i) failed to look after the best interests of the seller and the buyer by ensuring a valid and subsisting contract was put into effect in that the contract did not reflect the correct owners of the property either in the listing or in the Contract of Purchase and Sale;

(ii) failed to ensure a building contract was drafted in sufficient detail to clearly define the rights and obligations of the buyer and seller;

(iii) failed to recommend to the buyers to seek independent advice, including independent legal advice prior to the execution of the contract by all parties; and

(iv) failed to ascertain that the seller was not the registered owner of the property or the terms under which the seller could convey title to the buyer and failed to disclose to the buyer these facts.

✍ **Penalty:** Richard Wayne Appleton was suspended for fourteen (14) days from June 8, 2005 to June 21, 2005 (inclusive) for incompetence as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Mr. Appleton and a Consent Order was issued. In addition, as a condition of continued licensing he is required to successfully complete Chapter 2 (*Real Estate Services Act*) and Chapter 11 (Contracts for Real Estate Transactions) of the Real Estate Trading Services Licensing Course and to pay costs to the Council in the amount of \$500.

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

■ **Issue:** Roger Lloyd Love, managing broker, Royal LePage Locations West Realty, Penticton, was negligent within the meaning of section 9.12 of Regulation 75/61 under the *Real Estate Act* in that he:

(i) failed to ascertain that the seller was not the registered owner of the property or the terms under which the seller could convey title to the buyer; and

(ii) failed to recommend to the buyer to seek independent advice, including independent legal advice, prior to the execution of the contract by the parties.

Penalty: Roger Lloyd Love was reprimanded for negligence as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate

Council and Mr. Love and a Consent Order was issued. In addition, as a condition of continued licensing, he is required to enroll in and attend the next available Legal Update course and to pay costs to the Council in the amount of \$500.

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

■ **Issue:** Devre Lee Sharpe, associate broker, Re/Max Colonial Pacific Realty, White Rock, was negligent within the meaning of section 9.12 of Regulation 75/61 under the *Real Estate Act* in that she:

(i) failed to ascertain and disclose to the buyer or the licensee representing the buyer, that there was a Strata Corporation Bylaw in effect which prohibited persons under the age of 19 years from residing at the strata property (the “age restriction”);

(ii) failed to provide current Strata Corporation Bylaws to the buyer, or to the buyer’s representative;

(iii) failed to obtain and review the current applicable Strata Corporation Bylaws;

(iv) gave incorrect information to the licensee representing the buyer concerning whether there was an age restriction applicable to the strata property involved in the transaction.

✍ **Penalty:** Devre Lee Sharpe was suspended for fourteen (14) days from June 29, 2005 to July 12, 2005 (inclusive) for negligence as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Ms. Sharpe and a Consent Order was issued. In addition, as a condition of continued licensing, she is required to successfully complete Chapter 7 (Strata Properties (Condominiums) and Co-Operatives in British Columbia), enroll in and attend “Condo 202: Advanced Strata Law for Realtors” and the next available Legal Update course and to pay costs to the Council in the amount of \$600.00.

➤ **Complaint:** Breach of section 31(1)(c) of the *Real Estate Act* and sections 9.12 and 12.02 of Regulation 75/61 under the *Real Estate Act* /Failure to keep proper books, records and accounts, negligence, and misconduct.

■ **Issue:** New Century Real Estate Ltd., Vancouver, breached section 12.02 of Regulation 75/61 under the *Real Estate Act* in that it failed to keep proper books, records and accounts in that it did not maintain a trust journal that reflected all transactions on an annual basis and did not reconcile the trust liabilities/client ledger to the trust journal.

■ **Issue:** Keiko Norisue, managing broker, New Century Real Estate Ltd., Vancouver, misconducted herself within the meaning of section 31(1)(c) of the *Real Estate Act* in that she permitted an unlicensed assistant to undertake property management activities for which a licence is required, such as showing rental suites to potential tenants, negotiating and signing residential tenancy agreements on behalf of the landlord and/or brokerage and also signing correspondence in her name on behalf of the brokerage. Further, that as managing broker for the said brokerage she was negligent within the meaning of section 9.12 of Regulation 75/61 under the *Real Estate Act* in that she failed to ensure that the brokerage kept proper books, records and accounts.

✍ **Penalty:** New Century Realty Ltd. was reprimanded for the breach described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Keiko Norisue on behalf of New Century Real Estate Ltd. and a Consent Order was issued. Further, as a condition of continued licensing, New Century Realty Ltd. was required to pay costs to the Council in the amount of \$662.50.

Keiko Norisue’s managing broker’s licence was suspended for fourteen (14) days from April 20, 2005 to May 3, 2005 (inclusive),

for misconduct and negligence as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Ms. Norisue, and a Consent Order was issued. Ms. Norisue is, however, immediately eligible for licensing as an associate broker during the period of her suspension. In addition, as a condition of continued licensing, she is required to successfully complete Chapter 2 (Mandatory Requirements Under the *Real Estate Services Act*) of the Broker’s Licensing Course and to pay legal costs to the Council in the amount of \$500.00.

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

■ **Issue:** Boyd Alex McMillan, representative, Homelife Glenayre Realty Chilliwack Ltd., Chilliwack, was negligent within the meaning of Section 9.12 of Regulation 75/61 under the *Real Estate Act* in that, with respect to a specific offer, he failed to comply in the circumstances with the Council’s policy to recommend to each of the buyers that they seek separate, independent legal advice about the deposit arrangements before entering into a Contract of Purchase and Sale.

✍ **Penalty:** Boyd Alex McMillan was reprimanded for negligence as described above after an Agreed Statements of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Boyd Alex McMillan, and a Consent Order was issued. In addition, as a condition of continued licensing, he is required to enroll in and attend the first available Legal Update Course and pay legal costs to the Council in the amount of \$250.00.

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

■ **Issue:** Allan Charles Browne, managing broker, Homelife Glenayre Realty Chilliwack Ltd., Chilliwack, was negligent within the meaning of section 9.12 of Regulation 75/61 under the *Real Estate Act* in that, with respect to a specific offer, he was not in active charge of the transaction because as managing broker, he failed to ensure that a representative under his supervision complied in the circumstances with the Council's policy to recommend to each of the buyers that they seek separate, independent legal advice about the deposit arrangements before entering into the Contract of Purchase and Sale.

✍ **Penalty:** Allan Charles Browne's managing broker's licence was suspended for seven (7) days, from March 30 to April 5, 2005 (inclusive), for negligence as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Mr. Browne and a Consent Order was issued. Mr. Browne was immediately eligible for licensing as an associate broker during the period of his suspension but chose not to do so. In addition, as a condition of continued licensing, he is required to enroll in and attend the first available Legal Update Course and pay legal costs to the Council in the amount of \$500.00.

➤ **Complaint:** Breach of section 61(9) of the *Real Estate Act*

■ **Issue:** Marion Shirley Lochhead, representative, Sutton Group 1st West Realty, Coquitlam, breached section 61(9) of the *Real Estate Act* in that she failed to deliver a copy of the disclosure statement to the prospective buyers and afford them an opportunity to read the disclosure statement, and obtain a receipt from the buyers,

acknowledging that they had been afforded the opportunity, prior to the buyers entering into the Contract of Purchase and Sale with the developer.

✍ **Penalty:** Marion Shirley Lochhead was reprimanded for the breach described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Ms. Lochhead and a Consent Order was issued. In addition, as a condition of continued licensing, she is required to successfully complete Chapter 2 (*Real Estate Services Act*) of the Real Estate Trading Services Licensing Course and pay costs to the Council in the amount of \$500.

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

■ **Issue:** Carolyn Elizabeth Pennefather, representative, Re/Max Crest Realty Westside, Vancouver, was negligent within the meaning of section 9.12 of Regulation 75/61 under the *Real Estate Act* in that she failed to advise the seller in a timely manner that the deposit had not been made by the buyer upon subject removal.

✍ **Penalty:** Carolyn Elizabeth Pennefather was suspended for seven (7) days from April 20, 2005 to April 26, 2005 (inclusive) for negligence as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Ms. Pennefather, and a Consent Order was issued. In addition, as a condition of continued licensing she is required to successfully complete Chapter 2 *Real Estate Services Act* of the Real Estate Trading Services Licensing Course. She is also required, as a

condition of continued licensing, to attend the next available Legal Update course and to pay legal costs in the amount of \$500.00.

➤ **Complaint:** Breach of section 9.12, and section 9.16 of Regulation 75/61 under the *Real Estate Act*/negligence/nominee in active charge of the business

■ **Issue:** Douglas Byron Shewan, managing broker, Royal LePage - Wolstencroft, Langley was negligent within the meaning of section 9.12 of Regulation 75/61 under the *Real Estate Act* in that he failed to be in active charge of the business of the brokerage, in that he failed to review the Contract of Purchase and Sale for the purchase of property in Langley, B.C. upon his return from vacation and to note that section 38 of the *Real Estate Act* had not been complied with by a licensee in his office and to advise the licensee of that fact, and of the licensee's obligation to avoid continuing in a conflict of interest.

✍ **Penalty:** Douglas Byron Shewan had no penalty imposed after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Mr. Shewan and a Consent Order was issued. The basis for not imposing any penalty was due to mitigating circumstances including: the fact that the complaint was withdrawn; no loss was suffered by a member of the public; Mr. Shewan had provided appropriate advice to the salesperson concerning the notice and disclosure requirements prior to leaving for holidays; Mr. Shewan's long unblemished licensing record; and the *Robertson* decision (CAC May 2, 2000) wherein the Commercial Appeals Commission held that the power to discipline contained in section 31(3) of the *Real Estate Act* is permissive rather than mandatory.