



Report from Council

June 2007 Volume 42, No. 6

The Year in Review

REP Requirement

As reported in the August, October, December 2006 and April 2007 *Report from Council* newsletters, the Council's Relicensing Education Program (REP) was launched in January of this year. REP requires licensees to complete two courses every licensing cycle as a condition of continued licensing. Information about the program is being provided to licensees upon licence renewal. Licensees may also find detailed program information, requirements and a list of approved courses on the Council's website at www.recbc.ca.

Save Your Money – Avoiding Common Advertising Mistakes

Each year, the Council receives dozens of complaints relating to licensees failing to comply with the Council Rules on advertising. Licensees are reminded 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 specific Rules. Licensees who fail to comply with the advertising requirements may face a penalty of \$250 for a first contravention, \$500 for a second contravention and \$1000 for a third or subsequent contravention. For further information, licensees should review the February 2007 *Report from*

Council newsletter or review pages 87-91 of the Licensee Practice Manual.

Proper Licensing

As reported in numerous issues of the *Report from Council* newsletter, individual licensees and managing brokers have a shared responsibility to ensure that they are properly licensed at all times. Individuals must ensure that their licence is kept current and renewed when required. Managing brokers must have controls in place to ensure that any licensee, who transfers into the brokerage, files the necessary transfer forms and fees with the Council office. In addition, managing brokers must ensure that individuals do not provide real estate services until the Council issues a licence to do so.

To Read or Not to Read: Strata Council Meeting Minutes

Licensees constantly face the dilemma of whether to read strata council minutes when acting as a buyer's agent in the purchase of a strata unit. As outlined in the October 2006 *Report from Council* newsletter, licensees need to clearly communicate with their client whether or not they will provide this service so that buyers have a clear expectation as to the role of the licensee in these situations. Licensees are encouraged to review the October 2006

article, as well as the guidelines found on pages 198 and 199 of the Licensee Practice Manual.

Important Information about Selling Businesses

Under the *Real Estate Services Act*, the sale of a business that does not include a real estate component (i.e. does not include the sale or lease of real property, including the assignment of a lease) is not an activity that requires a real estate licence. Licensees who engage in the sale of a business with and without a real estate component need to be aware of a number of important factors affecting each. Licensees are encouraged to review this information as outlined in the August 2006 *Report from Council* newsletter available on the Council's website.

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REAL ESTATE COUNCIL OF B.C.

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RAMESH RIKHI

WAYNE STRANGLUND

LIZ TUTT

JUDI WHYTE

STATISTICS

(JUNE 2007)

REPRESENTATIVES: 15,649

ASSOCIATE BROKERS: 1,895

MANAGING BROKERS: 1,367

BROKERAGES: 1,406

Role of the Council

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

Report from Council

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

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A Note From The Chair

On June 30th, my term as Council Chair ends as does my role as the managing broker member for the County of Kootenay. I have enjoyed the opportunity to serve these past six years, which have been filled with rapid change, both in the industry and at Council.

You will note elsewhere in this Report that joining me in retirement are Keith Bevington from the County of Yale after two years of service, Marshall Cowe from the County of Westminister after four years of service, and Abdul Ghouri from the County of Vancouver after six years of service. Each of them has contributed to the Council's mandate during their tenure.

On July 1st, the Council welcomes Bryon Brandle of Vernon. In addition, the provincial government recently reappointed Danny Leung of Richmond to a further term which expires June 30, 2008. Dr. William Lim of Vancouver and Mr. Ramesh Rikhi of Summerland continue as our other public members.

During my term on

Council, we have seen the introduction of RESA, the creation of the Special Compensation Corporation, the licensing of strata managers, and the introduction of the Council's Relicensing Education Program (REP). The level of self-regulation the government has afforded us is indicative of the confidence it has placed on the Council, the industry and the public esteem we have earned.

There are a number of people and organizations I would like to thank for their assistance and cooperation during my term as Chair.

- The British Columbia Real Estate Association (BCREA) and its member boards/associations. In particular, I would like to thank Past President Kelly Lerigny and Executive Officer Robert Laing for their continued assistance and support with the introduction of the Real Estate Services Act and the introduction of the REP program;

- David Moore, Director



Philip Jones

and Kevin Arndt, Manager, Licensing Education at the Real Estate Division, Sauder School of Business, University of British Columbia. Their continuing contribution to ensuring British Columbia has outstanding licensing education programs is very much appreciated by the Council;

- Vice-Chair Satnam Sidhu and the remaining members of the Council.
- The volunteers that serve on the Council's Education, Rental Property and Strata Management advisory groups.

Finally, I would like to thank the Council's staff for another year well done.

*On behalf of the Council,
Philip Jones, Chair*

Council Office Closures

The Council office will be closed on the following dates:

July 2, 2007 for Canada Day

August 6, 2007 for BC Day

September 3, 2007 for Labour Day

Council Election Results

Each year, the term of six of seven Council members expires and elections are held to fill the vacancies. The following have been elected for a two-year term commencing July 1, 2007.

New Council Members

County of Yale (managing/associate broker member)
Bryon Robert Brandle, Re/Max – Vernon, Vernon (licensed for 20 years)

Re-elected Council Members

District #1 - County of Vancouver (managing/associate broker member)
Cynthia Algeta Chen, Macdonald Realty Westmar, Richmond (licensed for 18 years)

District #2 - County of Victoria (managing/associate broker member)
Wayne F. Strandlund, Fisgard Asset Management Corporation, Victoria (licensed for 38 years)

District #7 - Combined Counties of Kootenay, Cariboo and Prince Rupert (managing/associate broker member)
James (Jim) Gordon McNeal, Royal LePage Prince George, Prince George (licensed for 30 years)

District #1 - County of Vancouver (representative member)
Judith A. Whyte, Prudential Sussex Realty, West Vancouver (licensed for 30 years)

Districts #4,5,6 - County of Westminister (North and South of the Fraser River) (representative member)
Elizabeth (Liz) C. Tutt, Re/Max Nyda Realty, Chilliwack (licensed for 23 years)

All Districts of the Province (rental property/strata manager member)
William (Bill) R. Brown, Brown Bros. Agencies Limited, Victoria (licensed for 33 years)

The following Council members have a further year to serve

District #1 - County of Vancouver (managing/associate broker member)
Allan Corbett, NAI Commercial, Vancouver (licensed for 34 years)

District #5 - County of Westminister South of the Fraser River – (managing/associate broker member)
Gerry Martin, B.C. Farm and Ranch Realty Corp., Abbotsford (licensed for 28 years)

Districts #2,3,6,7 - Combined Counties of Victoria, Nanaimo, Yale, Kootenay, Cariboo & Prince Rupert (representative member)
Ann Petrone, Re/Max Kelowna, Kelowna (licensed for 17 years)

District #1 - County of Vancouver (managing/associate broker member)
Satnam Sidhu, Re/Max Crest Realty, North Vancouver (licensed for 28 years)

Government Appointed Public Members

The Council's government appointed public members are:
Danny Leung, William Lim and Ramesh Rikhi

Retiring from Council

Keith Bevington, Re/Max Front Street Realty,

Penticton, after two years of service.
Marshall Cowe, Royal LePage Coronation West Realty, Coquitlam, after four years of service.
Abdul Ghouri, Royal Pacific (Kingsway) Ltd, Vancouver, after six years of service.

Philip Jones, Royal LePage East Kootenay Realty, Cranbrook, after six years of service.



District #3 - County of Nanaimo (managing/associate broker member)
John Finlayson, Osborne Realty Services (1992) Ltd., Duncan (licensed for 24 years)

District #4 - County of Westminister North of the Fraser River – (managing/associate broker member)
Rosemary Barnes, Park Georgia Realty Ltd., Coquitlam (licensed for 31 years)

Sale of New or Used Manufactured Homes

Licensees should be aware that all manufactured homes for sale in B.C., new or used, are required to show evidence of approval as required by section 21 of the Electrical Safety Regulation, a Regulation of the *Safety Standards Act* which provides:

“21(1) Subject to Sections (3) and (4), a person must not use electrical equipment in British Columbia, or offer for sale, sell, display or otherwise dispose of electrical equipment for use in British Columbia, unless the electrical equipment displays a label or mark as follows:

(d) in the case of used manufactured homes, used factory-built structures and used recreational vehicles, a label supplied by the appropriate provincial

safety manager.”

A safety manager is defined in the *Safety Standards Act* as being a provincial safety manager or a local safety manager. Sections 12(1) and 12(2) of the *Safety Standards Act* provide that safety managers are appointed by the Minister to administer the Act and regulations.

Used manufactured homes may be offered for sale in the province without re-inspection provided that they bear a recognized certification agency label, and provided that the wiring is in good condition and has not been materially altered. A complete list of certification marks is available on the BC Safety Authority website at www.safetyauthority.ca/bcsa_pdf_files/D-E3_060414_1_Approved_Cert_Marks_Elec_P

rod.pdf

It is also important for licensees to note that even offering an unapproved manufactured home for sale is a contravention of the Electrical Safety Regulation. Licensees should, therefore, take care to ensure that in transactions involving manufactured homes, the home has the required electrical approval.

Questions regarding electrical approval of mobile homes can be directed to the B.C. Safety Authority located at 88 6th Street, New Westminster, B.C. V3L 5B3. Additional information is also available on the Authority website at www.safetyauthority.ca.

REDMA Amendment

Section 18 of the *Real Estate Development Marketing Act* (REDMA) was recently amended and will impact brokerages that act as trustees under REDMA. The amendment will require a developer to have deposit insurance in place and to certify in writing that the purchaser has no rescission rights under section 21 of REDMA before a trustee can release the purchaser's deposit. Specifically, section 19(3) of REDMA will be repealed and replaced with the following:

(3) A trustee must pay a deposit held under section 18(1) to a developer who has entered into a deposit protection contract in relation to the deposit on receiving

(a) from an insurer the original or a true copy of the deposit protection contract, and

(b) from the developer a certification, in writing, that the purchaser who paid the deposit has no right to rescission under section 21 [rights of rescission]

(4) If a deposit is paid under

subsection (3), the developer may use that deposit only for the developer's own purposes.

These changes were made to ensure that deposits are held in trust during the seven day cooling off period. The changes come into effect July 1, 2007. Licensees with questions about this change in REDMA may contact the Office of the Superintendent of Real Estate at 604-953-5200 or visit their website at www.fic.gov.bc.ca.

Third Party Payments from Commission Trust Accounts

A number of managing brokers have asked whether it would be permissible for a brokerage to pay monies directly from a brokerage commission trust account to a third party in situations where the third party is owed money by a licensee engaged by the brokerage. An example would be monies owing to the Canada Revenue Agency or monies owing pursuant to a Court Order.

In accordance with section 31 of the

Real Estate Services Act, the Council advises that it would be permissible to pay monies from a commission trust account on behalf of a licensee to a third party, as long as the licensee's consent was first obtained by the brokerage. However, in a Court Order situation, such as a garnishing order against the commission trust account, or where the brokerage and licensee in question were named in the Court

Order, the brokerage would not be required to obtain the consent of the licensee to pay the funds out of the commission trust account to the party identified in the Court Order.

Brokerages with questions about payments from commission trust accounts may contact the Council at 604-683-9664, toll-free 1-877-683-9664 or email info@recbc.ca.

Pesticide User Licence Now Required at Multi-Residences

The application of pesticides on multi-residence properties requires a Pesticide User Licence as of January 1, 2007. By requiring pesticide uses in multi-residence buildings to be performed under licence, the Ministry of Environment is ensuring that pesticides are being used safely and that people who may be exposed to pesticides are informed of their use so they can take measures to avoid exposure.

The Pesticide User Licence is a requirement of the Integrated Pest Management Act Regulation. Under the regulation, any pesticide use in or around multi-residence properties with four or more units will require a

Pesticide User Licence. All property owners and managers who apply pesticides will need to pass an exam on pest management and the safe handling of pesticides, and also register with the Ministry of Environment as pesticide applicators. This regulation pertains to the application of chemicals used for such things as eliminating bedbugs, controlling cockroaches, combating rodents or even managing weeds.

Multi-residence property managers will not need Pesticide User Licences if they hire licensed pest management services to perform all pesticide applications or if they only apply certain low-risk ("Excluded" Class) pesticides. For further information about licensing

requirements and a list of frequently asked questions, please visit the Ministry of Environment website at www.env.gov.bc.ca/epd/epdpa/ipmp/pesticide_pdfs/multi_res_ipm_reg.pdf

The *Integrated Pest Management Act* and Regulation require that all pesticide use by licence-holders be part of an Integrated Pest Management program and that licence-holders provide pesticide use notices to all people who could be exposed to the pesticide. For further information, licensees may contact the Ministry of Environment at 604-582-5200 or visit www.env.gov.bc.ca/epd/epdpa/ipmp/index.html

Disciplinary Decisions

Since the April 2007 *Report from Council* newsletter, the following actions have been taken as a result of disciplinary hearings and Consent Orders conducted by the Council.

COMPLAINT: Contravention of sections 3, 27, 28, 30, 35(1), 37 of the *Real Estate Services Act* sections 2-19, 3-2, 3-4, 4-5, 4-6, 5-1, 5-3 of the Council Rules/Professional misconduct, unlicensed activity, written service agreements, licensee names must be indicated, restrictions and requirements relating to advertising, client signing authority, payment into trust, brokerage holds money as stakeholder, withdrawal from trust, duty to act honestly and with reasonable care, associate broker and representative responsibilities, failure or refusal to cooperate with Council investigation

ISSUE: Howard Joel Hendin, currently unlicensed, who, while licensed as a representative with Royal Pro Real Estate Network Inc., White Rock, committed professional

misconduct within the meaning of section 35(1) of the *Real Estate Services Act* in that he:

(a) allowed or permitted an unlicensed entity, Hendin Properties Inc., to provide real estate services to or on behalf of another, for or in expectation of remuneration, contrary to section 3 of the Act;

(b) undertook rental property management services to an owner of rental real estate without a waiver of the requirement for a written service agreement by the prospective client, contrary to section 5-1 of the Council Rules;

(c) required, allowed or permitted breaches of the *Residential Tenancy Act* of British Columbia in having some tenants pay security deposits equal to or in excess of one month's rent, contrary to the *Residential Tenancy Act*;

(d) provided real estate services without clearly indicating the licensee name of his related brokerage in the course of providing such real estate services, contrary to section 4-5 of the Council Rules;

(e) failed to ensure that the brokerage licensee name was clearly indicated in the course of providing real estate services, and providing real estate services without always clearly indicating the licensee name of his related brokerage, contrary to section 4-5 of the Council Rules;

(f) published real estate advertising that does not comply with section 4-6 of the Council Rules;

(g) failed to have written service agreements or complete written service agreements with respect to specific content requirements and the requirements of some rental property management agreements, amendments and authorized signatories in accordance with section 5-1 of the Council Rules;

(h) failed to have written authorization before signing a contract on behalf of a client, contrary to section 5-3 of the Council Rules;

(i) failed to ensure rent and security deposit cheques were made payable only in the licensee name of the brokerage, marked "in trust", contrary to sections

27, 28 and 30 of the Act;

(j) in relation to a tenancy agreement for rental of premises of a tenant and a security deposit from the tenant

(i) failed to promptly pay or deliver to the brokerage the money held or received from, for or on behalf of the principal in relation to the real estate services, contrary to section 27(1)(a) of the Act;

(ii) deposited the security deposit into a personal bank account;

(iii) required, allowed or permitted a security deposit in excess of one half of one month's rent, contrary to section 19 of the *Residential Tenancy Act*;

(iv) failed to act with reasonable care and skill when providing real estate services, contrary to section 3-4 of the Council Rules;

(v) failed to keep the managing broker informed concerning the real estate services being provided and other activities being performed on behalf of the brokerage, contrary to section 3-2(2) (a) of the Council Rules;

(vi) failed to promptly notify the managing broker on learning of conduct that the representative considers may be conduct referred to in section 3-1(2) of the Council Rules, i.e. improper conduct in relation to the security deposit, contrary to section 3-2(5)(a) or (b) of the Council Rules;

(k) in relation to a second tenant

(i) failed to promptly provide to the managing broker the original or copy of all records referred to in section 3-2(1) of the Council Rules that are in possession of the representative and that were prepared by or on behalf of the representative, or received from or on behalf of the principal;

(ii) failed to keep the managing broker informed of the real estate services being provided, and other activities being performed by the representative on behalf of the brokerage;

(l) in relation to a third tenant with regard to a security deposit from the third tenant

(i) failed to promptly pay or deliver to the brokerage the money held or

received from, for or on behalf of the principal in relation to the real estate services, contrary to section 27(1)(a) of the Act;

(ii) deposited the security deposit and rents into a personal bank account;

(iii) required, allowed or permitted a security deposit in excess of one-half of one month's rent, contrary to section 19 of the *Residential Tenancy Act*;

(iv) failed to act with reasonable care and skill when providing real estate services, contrary to section 3-4 of the Council Rules;

(v) failed to keep the managing broker informed concerning the real estate services being provided, and other activities being performed on behalf of brokerage, contrary to section 3-2(2)(a) of the Council Rules;

(vi) failed to promptly notify the managing broker on learning of conduct that the representative considers may be conduct referred to in section 3-1(2) of the Council Rules, i.e. improper conduct in relation to the security deposit, contrary to section 3-2(5)(a) or (b) of the Council Rules;

(m) failed to reply promptly to an inquiry addressed to the licensee by the Council, contrary to section 2-19 of the Council Rules; and

(n) failed or refused to cooperate with an investigation by the Council in failing or refusing to respond to a Council inquiry.

RESULT: Howard Joel Hendin will not apply for licensing as a representative for a period of five (5) years commencing from May 29, 2006 to May 28, 2011 and that application will be subject to a qualification hearing pursuant to section 10 of the *Real Estate Services Act* and section 2-6 of the Council Rules as Mr. Hendin committed professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Howard Joel Hendin, and a Consent Order was issued. In addition, as a condition of re-licensing, he is required to pay

enforcement expenses to the Council in the amount of \$1,500.00.

COMPLAINT: Contravention of sections 3, 6, 25, 27, 28, 29, 30, 31, 35 of the *Real Estate Services Act* and sections 3-1, 4-4, 4-5, 4-6, 5-1, 5-3, 8-1, 8-2, 8-3, 8-6, 8-9 of the Council Rules/ Professional misconduct, requirement for licence, brokerage must have managing broker, brokerage records, payment into trust, holding money as stakeholder, interest on trust account, withdrawals from trust, payment of licensee remuneration, managing broker responsibilities, licensee names, licensee names must be indicated, restrictions and requirements related to advertising, service agreements, signing agreements on behalf of clients, financial records, general account records, trust account records, rental property management records, and records must be kept up to date.

ISSUE: Royal Pro Real Estate Network Inc., White Rock, committed professional misconduct within the meaning of section 35(1)(a) and (e) of the Act in that it:

(a) in relation to rental property management services, failed to maintain proper books, accounts and other records in accordance with the Council Rules, contrary to section 25 of the Act and, in particular, it failed to comply with the requirements of sections 8-1, 8-3, 8-6 and 8-9 of the Council Rules;

(b) failed to have the monthly trust asset and liability reconciliation required under section 8-3 of the Council Rules for each trust account of a brokerage reviewed, dated and initialed by the managing broker or by a person designated by the managing broker;

(c) failed to prepare and keep monthly reconciliations for both the general account and for the trust account prepared in a timely fashion and, in any case, no later than five weeks after the monthly accounting cut-off date for the account, as required by sections 8-2 and 8-3 of the Council Rules;

(d) failed to promptly pay into a brokerage trust account all money held or received on account of remuneration for real estate services, as required by section 27 of the Act;

(e) failed to cause the savings institution crediting interest on money held in a brokerage trust account to pay the interest to the Real Estate Foundation, as required by section 29 of the Act;

(f) failed to pay into a brokerage trust account all money held or received from, for or on behalf of a principal in relation to real estate services, and all money held or received on account of remuneration for real estate services, and to withdraw licensee remuneration from the brokerage trust account, in contravention of sections 27(2) and 31 of the Act;

(g) allowed or permitted an unlicensed entity to provide real estate services to or on behalf of another, for or in expectation of remuneration, contrary to section 3 of the Act;

(h) undertook rental property management services to an owner of rental real estate without having a written service agreement and without a waiver of the requirement for a written service agreement by the prospective client, contrary to section 5-1 of the Council Rules;

(i) required, allowed or permitted breaches of the *Residential Tenancy Act* of British Columbia in having tenants pay security deposits equal to or in excess of one month's rent, contrary to the *Residential Tenancy Act*;

(j) failed to ensure that the name of the licensee was clearly indicated in the course of providing real estate services, contrary to sections 4-4 and 4-5 of the Council Rules;

(k) allowed or permitted a licensee to provide real estate services without clearly indicating the licensee name of his related brokerage, contrary to section 4-5 of the Council Rules;

(l) failed to ensure that its licensee name was clearly indicated in the course of providing real estate services, and allowed or permitted a licensee to

provide real estate services without clearly indicating the licensee name of the related brokerage, contrary to sections 4-5 and 4-6 of the Council Rules;

(m) allowed or permitted the publication of real estate advertising that did not comply with section 4-6 of the Council Rules;

(n) failed to have written service agreements, in accordance with section 5-1 of the Council Rules;

(o) failed to have written authorization before signing a contract on behalf of a client, contrary to section 5-3 of the Council Rules;

(p) contrary to section 8-1 of the Council Rules and section 25 of the Act, allowed or permitted

(i) deposit of trust monies to ATM machines without recording the deposits to the appropriate trust account records,

(ii) failed to prepare income statements for property owners, and failed to provide owners with copies of invoices for expenses incurred, and

(iii) failed to maintain a trust asset and liability listing;

(q) failed to maintain trust account banking records, contrary to section 8-3 of the Council Rules and section 25 of the Act;

(r) failed to maintain a list of current tenants for each property, including details of security deposits, damage deposits, and other deposits paid by each tenant, contrary to section 8-6 of the Council Rules and section 25 of the Act;

(s) failed to ensure rent and security deposit cheques were made payable only in the licensee name of the brokerage, marked "in trust", and to ensure proper policies and procedures were in place to prevent money held by the brokerage as a stakeholder from being withdrawn, contrary to sections 27, 28 and 30 of the Act;

(t) failed or refused to cooperate with an investigation under section 37, contrary to section 35(1)(e);

(u) failed to have a managing broker who was actively engaged in the

management of the brokerage, who would ensure that the business of the brokerage was carried out competently and in accordance with the Act, Regulations, Rules and Bylaws, contrary to section 6 of the Act and section 3-1 of the Council Rules.

ISSUE: Larry Ferster, managing broker, Royal Pro Real Estate Network Inc., committed professional misconduct within the meaning of section 35 of the *Real Estate Services Act* in that he failed to be actively engaged in the management of the brokerage to ensure that the business of the brokerage was carried out competently and in accordance with the Act, Regulations, Rules and Bylaws and failed to ensure that there was an adequate level of supervision for a representative performing duties on behalf of the brokerage.

RESULT: Royal Pro Real Estate Network Inc. was reprimanded for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Royal Pro Real Estate Network Inc, and a Consent Order was issued. In addition, as a condition of continued licensing, Royal Pro Real Estate Network Inc. and Larry Kenneth Ferster are jointly and severally liable to pay audit costs and enforcement expenses to the Council in the amount of \$3,000.00.

RESULT: Larry Kenneth Ferster's licence was suspended for ninety (90) days from May 2, 2007 to July 30, 2007 (inclusive) for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Larry Kenneth Ferster, and a Consent Order was issued. In addition, as a condition of continued licensing, he was required to successfully complete the disciplinary education assignments applicable to

Chapter 2 (Mandatory Requirements under the *Real Estate Services Act*) and Chapter 14 (Property Management and Leasing) of the Broker's Licensing Course. In addition, as a condition of continued licensing, Larry Kenneth Ferster and Royal Pro Real Estate Network Inc. are jointly and severally liable to pay audit costs and enforcement expenses to the Council in the amount of \$3,000.00

COMPLAINT: Contravention of section 31(1)(c) of the *Real Estate Act*, section 37 of the *Real Estate Services Act* and section 2-19 of the Council Rules/Professional misconduct, prompt reply to Council inquiries

ISSUE: Mohsen Shahram, representative, who, while licensed with Pacific Place – Arc Realty Ltd., Vancouver, committed professional misconduct under the *Real Estate Act* in that he:

(a) communicated directly with a seller when the seller was represented by another brokerage and represented to that seller that if that seller did not agree to increase the commission payable to him, the transaction would not complete, which he knew or ought to have known was untrue or misleading;

(b) represented to the seller that the buyers had in turn countered the seller's verbal counter and that the seller could accept that counter by signing an addendum presented to the seller by him, which he knew was untrue or misleading;

(c) failed to turn the contract promptly in to his brokerage;

(d) failed in these circumstances to ensure that the buyers and seller or either of them were aware that the deposit would not be held by the brokerage in its statutory trust account but that it would be held by the buyers' lawyer and that, as such, the seller should seek independent legal advice as the stakeholder provisions would not apply;

(e) provided an addendum to the seller whereby the seller would credit

money to the buyers to compensate for repairs when he knew or ought to have known that it was untrue or misleading;

(f) failed to keep the buyers informed of the particulars of the transaction, including the fact that the sale price had been reduced and that he was seeking additional remuneration directly from the seller; and

(g) failed to cooperate with the Council investigation to promptly reply to the Council in accordance with section 37 of the *Real Estate Services Act* and section 2-19 of the Council Rules.

RESULT: Mohsen Shahram, currently unlicensed, be suspended for ninety (90) days upon re-licensing for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Mohsen Shahram, and a Consent Order was issued. In addition, as a condition of re-licensing, he is required to successfully complete the disciplinary education assignments applicable to Chapter 9 (Professional Ethics) and Chapter 12 (Law of Agency) of the Real Estate Trading Services Licensing Course, and as a further condition of re-licensing, pay a discipline penalty to the Council in the amount of \$2,000.00 and enforcement expenses to the Council in the amount of \$1,000.00

COMPLAINT: Contravention of sections 35(1)(a) and 35(1)(d) of the *Real Estate Services Act*, section 2-19 of the Council Rules/Professional misconduct, incompetence, failure to respond

ISSUE: Robert John Zoost, representative, currently unlicensed, who, while licensed with Distinctive Properties Inc., Qualicum Beach,

(a) committed professional misconduct within the meaning of section 35(1)(d) of the *Real Estate Services Act* in that he demonstrated incompetence by:

(i) entering into commission advancement agreements in relation to

the sale of a property on behalf of his brokerage without the authority of his brokerage, thereby creating a financial obligation for the said brokerage;

(ii) causing the name of his managing broker to be endorsed on the said agreements without the managing broker's knowledge or consent;

(iii) failed to notify a second company that he had previously entered into the said commission advancement agreements with the first company in relation to the sale of the said property, which resulted in him obtaining total commission assignments which exceeded the total earned commission; and

(b) committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he contravened section 2-19 of the Council Rules when he failed to respond promptly to an inquiry of the Council.

RESULT: Robert John Zoost, currently unlicensed, remain unlicensed for a period of seventy-five (75) days from January 19, 2007 and that he would then be eligible to be re-licensed as a representative on the following terms:

(a) he be required to remain at the brokerage with which he first becomes licensed for a period of two years from the date he first becomes licensed with that brokerage, and that he be monitored by the managing broker who shall be provided a copy of the decision,

(b) be assessed a discipline penalty in the amount of \$1,000.00 to be paid by June 1, 2007 as a condition of continued licensing. If that sum has not been paid by June 1, 2007, his licence shall be suspended forthwith until such time as the discipline penalty has been paid in full,

(c) he be required to pay enforcement expenses to the Council in the amount of \$2,000.00 by June 1, 2008 as a condition of continued licensing and if that sum is not paid by June 1, 2008, his licence shall be suspended forthwith, and

(d) as a condition of continued licensing, he successfully complete the disciplinary education assignments applicable to Chapter 9 (Professional Ethics) of the Real Estate Trading Services Licensing Course.

COMPLAINT: Contravention of section 31(1)(c) of the *Real Estate Act*, section 9.12 of Regulation 75/61 under the *Real Estate Act*, section 35(1)(d) and section 35(2) of the *Real Estate Services Act*, and section 5-3 of the Council Rules/Misconduct, negligence, incompetence, conduct unbecoming, and signing agreements on behalf of clients.

ISSUE: Paul Song Wu, representative, Royal Pacific Realty Corp., Vancouver, who, while licensed with Macdonald Realty Ltd. dba Macdonald Realty:

(a) breached section 31(1)(c) and section 9.12 of Regulation 75/61 under the *Real Estate Act* in that he

(i) failed to have a first seller sign the contract as one of the owners of the property; and

(ii) witnessed the signature of a second seller on the contract without seeing the second seller sign the contract; and

(b) contravened section 35(1)(d) and section 35(2) of the *Real Estate Services Act* and section 5-3 of the Council Rules in that he:

(i) signed and witnessed the name of a second seller on the second contract without the authorization of that seller;

(ii) failed to have a first seller sign the second contract as one of the owners of the property;

(iii) failed to have a new listing agreement executed in the name of a third seller, who was the mother of the first two sellers, when the property was transferred into her name in September 2005; and

(iv) signed the name of a third seller on the cancellation without her authorization and submitted same to the Multiple Listing Service in order to cancel the second contract.

RESULT: Paul Song Wu's licence was suspended for sixty (60) days from April 18, 2007 to June 16, 2007 (inclusive) for misconduct, negligence and 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 Paul Song Wu, and a Consent Order was issued. In addition, as a condition of continued licensing, he is required to successfully complete the disciplinary education assignments applicable to Chapter 2 (*Real Estate Services Act*), Chapter 9 (Professional Ethics) and Chapter 12 (Law of Agency) of the Real Estate Trading Services Licensing Course, and to pay enforcement expenses to the Council in the amount of \$500.00.

COMPLAINT: Contravention of section 35(1)(a) of the *Real Estate Services Act*, sections 3-1, 3-3 and 3-4 of the Council Rules/Professional misconduct, duties to clients, duty to act honestly and with care and skill, managing broker responsibilities

ISSUE: Tracy Louise MacKenzie, representative, Best-West Realty Ltd., Kamloops, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening sections 3-3 and 3-4 of the Council Rules in that she

(i) misrepresented a material fact about the real estate transaction, in her capacity as listing agent, when she advised a seller that one of the offers on the property had been withdrawn, when it had not; and

(ii) placed herself in a conflict of interest when she acted as a limited dual agent while she was also a buyer in a circumstance where there were multiple offers relating to a property.

ISSUE: Dwight Yzebrand Vos, managing broker, Best-West Realty Ltd., Kamloops, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening section 3-1 of the

Council Rules in that he permitted Ms. MacKenzie to be in a conflict of interest when he permitted her to continue to act as a limited dual agent for herself and a seller in her purchase of a property.

RESULT: Tracy Louise MacKenzie's licence was suspended for fourteen (14) days from April 25, 2007 to May 8, 2007 (inclusive) for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Tracy Louise MacKenzie, and a Consent Order was issued. In addition, as a condition of continued licensing, she is required to successfully complete the disciplinary education assignments applicable to Chapter 10 (Law of Contract) and Chapter 12 (Law of Agency) of the Real Estate Trading Services Licensing Course and to pay enforcement expenses to the Council in the amount of \$500.00.

RESULT: Dwight Yzebrand Vos's licence was suspended for seven (7) days from April 25, 2007 to May 1, 2007 (inclusive) for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Dwight Yzebrand Vos, and a Consent Order was issued. In addition, as a condition of continued licensing, he is required to successfully complete the disciplinary education assignments applicable to Chapter 12 (Law of Agency) of the Real Estate Trading Services Licensing Course and to pay enforcement expenses to the Council in the amount of \$500.00.

COMPLAINT: Contravention of section 35(1)(a) and 35(1)(d) of the *Real Estate Services Act* and section 5-6 of the Council Rules/Professional misconduct, incompetence, representations as to sale, resale, purchase.

ISSUE: Klaus Gerhard Dreher, representative, Macdonald Realty, Kelowna (1995) Ltd. dba Macdonald Realty Kelowna, Kelowna, who, while licensed with Peachland Realty Ltd., Peachland and subsequently with Macdonald Realty Kelowna,

(a) contravened section 35(1)(d) of the *Real Estate Services Act* in that he:

(i) listed and negotiated a sale of a manufactured home which did not show an approval sticker or decal establishing that it complied with the requirements of the *Electrical Safety Act*, and;

(ii) failed to recommend to the seller to ensure that the said property had an electrical approval before offering it for sale; and

(b) contravened section 35(1)(a) of the *Real Estate Services Act* by contravening section 5-6 of the Council Rules in that he represented to or promised a seller as an inducement that if she listed and sold a manufactured home with him, he would pay the sum of \$500.00 towards an electrical inspection once it sold, without at the time of making the said representation or promise, delivering to the seller a statement signed by him clearly setting out all of the details of the inducement representation.

RESULT: Klaus Gerhard Dreher's licence was suspended for fourteen (14) days from April 25, 2007 to May 8, 2007 (inclusive) for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Klaus Gerhard Dreher, and a Consent Order was issued. In addition, as a condition of continued licensing, he is required to successfully complete the disciplinary education assignments applicable to Chapter 2 (*Real Estate Services Act*) of the Real Estate Trading Services Licensing Course and to pay enforcement expenses to the Council in the amount of \$500.00.

COMPLAINT: Contravention of section 35(1)(a) of the *Real Estate Services Act* and section 3-4 of the Council Rules/Professional misconduct, contravention of Act and duty to act with reasonable care

ISSUE: Michael Randolph Cowling, managing broker, S-376 Holdings Ltd. dba Michael Cowling and Associates Realty, Richmond, contravened section 3-4 of the Council Rules and thereby committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he:

(a) failed to ascertain the nature of the caveat registered against the title of a property by the Public Guardian and Trustee, which caveat protected the interests of a seller due to his mental incapacity;

(b) signed as witness to both signatures on the listing contract without seeing one of the parties sign the contract; and

(c) failed to provide a copy of the said listing contract to the Public Guardian and Trustee upon request when advised by the Public Guardian and Trustee that they were representing the financial and legal affairs of one of the parties.

RESULT: Michael Randolph Cowling's licence was suspended for seven (7) days from June 20, 2007 to June 26, 2007 (inclusive) for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Michael Randolph Cowling, and a Consent Order was issued. In addition, as a condition of continued licensing, he is required to enroll in and attend the first available "Legal Update" course and to pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of section 35(1)(d) of the *Real Estate Services Act*/Incompetence

ISSUE: George Jeninga, associate broker, Internet Realty Ltd. dba Prudential Kelowna Properties, Kelowna, was incompetent within the meaning of section 35(1)(d) of the *Real Estate Services Act* in that he

(i) permitted the sellers to enter into a contract of purchase and sale to a second buyer when the sellers were already committed under an existing contract of purchase and sale involving the first buyers; and

(ii) failed to ensure the acceptance of the offer from the second buyer was conditional on the sellers being released from any contractual obligation to the first buyers.

RESULT: George Jeninga's licence was suspended for seven (7) days from April 25, 2007 to May 1, 2007 (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 George Jeninga, and a Consent Order was issued. In addition, as a condition of continued licensing, he is required to successfully complete the disciplinary education assignments applicable to Chapter 10 (The Law of Contract) and Chapter 11 (Contracts for Real Estate Transactions) of the Real Estate Trading Services Licensing Course, and to pay enforcement expenses to the Council in the amount of \$500.00.

COMPLAINT: Contravention of section 35(1)(d) of the *Real Estate Services Act*/Incompetence

ISSUE: Howard Lyle Sundby, representative, Mara Realty Inc. dba Re/Max at Mara Lake, Sicamous, who, while licensed with Shuswap Realty Ltd. (Sic) dba Re/Max Shuswap (Sic) was incompetent and therefore committed professional misconduct in that he:

(i) allowed the buyers to waive the conditions that required the sellers to pump out the septic tank and that the buyers be satisfied with the results prior

to that event occurring; and

(ii) failed to ensure that approval of the septic system was drafted as a proper subject clause, including that it was for the sole benefit of the buyers, the date by which the system was to be inspected and the latest date that the subject could be satisfied.

RESULT: Howard Lyle Sundby was reprimanded 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 Howard Lyle Sundby, and a Consent Order was issued. In addition, as a condition of continued licensing, he was ordered to pay enforcement expenses to the Council in the amount of \$500.00.

COMPLAINT: Contravention of section 35(1)(a) of the *Real Estate Services Act*, section 3-1(3)(b) and section 7-7(1)(b) of the Council Rules /Professional misconduct, failure to file Accountant's Report

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

ISSUE: Peter Motomasa Saito, associate broker, West Coast Realty Ltd. (WBlvd) dba Sutton Group-West Coast Realty (W.Blvd), Vancouver, who, while licensed as managing broker with Saito-House Real Estate Services Inc. dba Sutton Group-Saito House Real Estate Services, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening section 3-1(3)(b) of the Council Rules in that he failed to ensure that the said Accountant's

Report was filed with the Council by the prescribed date.

RESULT: Saito-House Real Estate Services Inc. dba Sutton Group-Saito-House Real Estate Services was reprimanded for the contravention described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Saito-House Real Estate Services Inc. dba Sutton Group-Saito-House Real Estate Services, and a Consent Order was issued. In addition, as a condition of continued licensing, Saito-House Real Estate Services Inc. dba Sutton Group-Saito-House Real Estate Services and Peter Motomasa Saito are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00.

RESULT: Peter Motomasa Saito was reprimanded for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Peter Motomasa Saito, and a Consent Order was issued. In addition, as a condition of continued licensing, Peter Motomasa Saito and Saito-House Real Estate Services Inc. dba Sutton Group-Saito-House Real Estate Services are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of sections 6(2)(b), 35(1)(a) and 35(1)(d) of the *Real Estate Services Act*, sections 3-1(1)(a) and (b), 3-1(3) and 7-7(1)(b) of the Council Rules/Professional misconduct, failure to file Accountant's Report, managing broker duties in relation to brokerage.

ISSUE: Otter Bay Management Ltd., Pender Island, committed professional misconduct within the meaning of section 35 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 Real Estate Council by the prescribed date.

ISSUE: Charles Spence, managing broker, Otter Bay Management Ltd., Pender Island, committed professional misconduct within the meaning of section 35(1)(a) and 35(1)(d) of the *Real Estate Services Act* by not fulfilling his responsibilities as a managing broker for the performance of the duties imposed on the brokerage by its licence within the meaning of section 6(2)(b) of the *Real Estate Services Act* and by contravening section 3-1(1)(a) and (b) and 3-1(3) of the Council Rules in that he failed to ensure that an Accountant's Report was filed with the Council by the prescribed date.

RESULT: Otter Bay Management Ltd. was reprimanded for the contravention described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Otter Bay Management Ltd., and a Consent Order was issued. In addition, as a condition of continued licensing, Otter Bay Management Ltd. and Charles Spence are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$500.00.

RESULT: Charles Spence was reprimanded for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Charles Spence, and a Consent Order was issued. In addition, as a condition of continued licensing, Charles Spence and Otter Bay Management Ltd. are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$500.00.

Licensee Practice Manual Survey

In order to ensure that licensees have the most current practice information available, the Council is considering a number of options for the format of future editions of the Licensee Practice Manual. In order to assist with this process, the Council is asking licensees to complete this short survey and **fax** it to the Council office at 604-683-9017 by July 16, 2007.

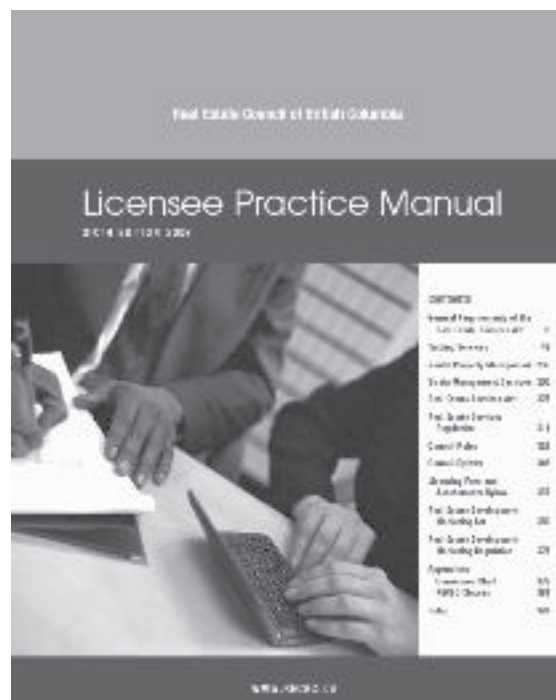
What format would you prefer for future editions of the Licensee Practice Manual?

Please check your preference (mark one only).

- ☐ **CD ROM format**
- ☐ **Same as current format (perfect bound)**
- ☐ **3-ring binder format**
- ☐ **Online version on the internet only**

Do you have any other comments about future editions of the Licensee Practice Manual?

Please tear off this page and fax it to the Council office at 604-683-9017 by July 16, 2007. Thank you for taking the time to assist the Council. Your input is appreciated.



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

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