



Report from Council

June 2008 Volume 43, No. 8

The Year in Review

FINTRAC Changes

As reported in the April 2008 *Report from Council* newsletter, FINTRAC has announced a number of changes to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*. These changes will have an impact on the way licensees identify their clients and track information. Licensees are urged to familiarize themselves with these important changes that take effect June 23, 2008. For more information, visit www.fintrac.gc.ca or call 1-866-346-8722.

Relicensing Education Program (REP)

Over the past year, the Council has issued several notices in the *Report from Council* newsletter advising licensees of their REP requirements. Licensees are reminded that licence renewal is dependant on completing the REP course requirements. Further information can be found on the Council's website at www.recbc.ca/licensee_info/rep.htm.

Rental and Strata Managers Special Report

In April 2008, the Council issued a Special Report to licensees who provide rental and/or strata management services to clients. This Special Report outlines the licensing requirements, exemptions and various scenarios for both rental and strata managers. Licensees who provide either of these services to clients should ensure they have read this important information.

Conflicts of Interest

In December 2007, the Council issued the second of two articles relating to conflicts of interest. The latest article focuses on trading services and outlined a number of conflict of interest scenarios, including the situation where a licensee represents two buyers who want to buy the same property. In April 2007, a similar article was developed for the property management sector and also provided a number of examples of conflicts of interest.

Pre-Sale Marketing

As reported in the August 2007 *Report from Council* newsletter, licensees are reminded that the *Real Estate Development Marketing Act* requires that a Disclosure Statement be filed with the Office of the Superintendent of Real Estate before marketing a development unit in a development property. Marketing includes the use of "letters of intent", "priority lists", "reservation agreements" (which would include reservation or priority fees), "conversion rights", "rights of first refusal", or any similar agreement that carries with it the right to acquire a strata lot.

Continuing Duty of Confidentiality

Licensees should be aware of their continuing duty of confidentiality as outlined in the October 2007 *Report from Council* newsletter. When an agency agreement and, thus, the fiduciary relationship between broker and client has been terminated, some fiduciary

duties persist thereafter – thus, for example, on termination of an agency relationship, brokers cannot use confidential information acquired while representing a client for their own or a third party's benefit.

Past copies of the *Report from Council* newsletters are posted under the Licensee Information tab on the Council's website at www.recbc.ca. Licensees with questions may contact the Council office at 604-683-9664, toll-free 1-877-683-9664 or email info@recbc.ca.

In this Issue:

- The Year in Review
- More Information About Conflicts of Interest
- Purchasing Development Property Located Outside BC
- Paying and Receiving Referral Fees - Part Two
- Licensees Must Give Notice of Discipline, Bankruptcy, Criminal Proceedings
- REP Sheet
- Revised Discipline Publication Policy Statement
- Disciplinary Decisions



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WAYNE STRANGLUND

LIZ TUTT

STATISTICS

(JUNE 2008)

REPRESENTATIVES: 16,957
ASSOCIATE BROKERS: 1,838
MANAGING BROKERS: 1,357
BROKERAGES: 1,415

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

At the end of June, my term as Council Chair ends as does my final term as one of the managing/associate broker members for the County of Vancouver. I have thoroughly enjoyed my term on Council over the past eight years as it has been the highlight of my service career in the real estate industry.

Joining me in retirement is Allan Corbett from the County of Vancouver after 10 years of service, Rosemary Barnes from the County of Westminister after eight years of service and William Lim after five years of service as one of Council's three publicly appointed members.

In July we welcome Bill Binnie of West Vancouver and Bill Philips of Whistler. In addition, effective July 1, 2008 the provincial government has re-appointed public members Danny Leung of Richmond and Ramesh Rikhi of Summerland for an additional one year term.

As I mentioned in my February *Note from the Chair*, this year marks the Council's 50th anniversary. The industry has seen significant change since the Council was first formed in

1958. The Council has responded to that change with the support and encouragement of both the provincial government and the industry. As a result, the Council, together with the industry, has created a professional environment which maintains consumer confidence.

As my predecessors have done before, I wish to thank a number of people and organizations for their assistance, cooperation and encouragement during my term as Chair.

•Superintendent of Real Estate, Alan Clark and the rest of the staff at the BC Financial Institutions Commission.

•David Moore, Director and Kevin Arndt, Associate Director, 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;

•British Columbia Real Estate Association (BCREA) and its member boards/associations. In particular, I



Satnam Sidhu

would like to thank Chief Executive Officer Robert Laing for his continued assistance and support;

•Vice-Chair Judi Whyte and the remaining members of the Council.

•The volunteers that serve on the Council's Complaint Committee and Education, Rental Property and Strata Management Advisory Groups.

Finally, I would like to thank the Council's staff for all of their efforts over the past year and making my term as Chair so enjoyable. In particular, I thank Executive Officer Robert Fawcett for his valuable assistance. The Council is fortunate to continue to benefit from Robert's dedication to the industry.

*On behalf of Council
Satnam T. Sidhu, Chair*

Office Closures

The Council office will be closed on the following dates:

Tuesday, July 1, 2008 for Canada Day

Monday, August 4, 2008 for BC Day

Council Election Results

There are 16 members of the Real Estate Council, including three members appointed by the provincial government. Thirteen members are chosen through an election process open to all real estate licensees in the province. The elected members are comprised of three representatives and nine brokers representing the various provincial counties. One individual is elected as the strata/rental property management member.

Each year, the term of six or 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, 2008.

New Council Members

District #1 - County of Vancouver (broker members)

William (Bill) Binnie, Royal LePage Northshore, West Vancouver (licensed for 34 years)

William (Bill) Phillips, Whistler Real Estate Company Limited, Whistler (licensed for 34 years)

District #4 - County of Westminister (North of the South bank of the Fraser River (broker member)

Marshall Cowe, Royal LePage Coronation West Realty, Coquitlam (licensed for 36 years)

Re-elected Council Members

District #3 - County of Nanaimo (broker member)

John Finlayson, Osborne Realty Services (1992) Ltd., Duncan (licensed for 25 years)

District #5 – County of Westminister (South of the Fraser River) (broker member)

Gerry Martin, B.C. Farm and Ranch Realty Corp., Abbotsford (licensed for 30 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 18 years)

Richmond (licensed for 19 years)

District #2 - County of Victoria (broker member)

Wayne Strandlund, Fisgard Asset Management Corp., Victoria (licensed for 39 years)

Districts #4 and 5 - County of Westminister (North and South of the Fraser River) (representative member)

Liz Tutt, Re/Max Nyda Realty, Chilliwack (licensed for 24 years)

District #6 - County of Yale (broker member)

Bryon Brandle, Re/Max Vernon, Vernon (licensed for 21 years)

District #7 - Combined Counties of Kootenay, Cariboo and Prince Rupert (broker member)

Jim McNeal, Royal LePage Prince George, Prince George (licensed for 31 years)



Real Estate Council of British Columbia

The following Council members have a further year to serve

All Districts of the Province (rental property/strata management member)

William Brown, Brown Bros. Agencies Limited, Victoria (licensed for 34 years)

District #1 - County of Vancouver (representative member)

Judi Whyte, Prudential Sussex Realty, West Vancouver (licensed for 31 years)

District #1 - County of Vancouver (broker member)

Cynthia Chen, Macdonald Realtors Westmar,

Government Appointed Public Members

The Council's government appointed public members are: Danny Leung, Ramesh Rikhi and one member to be appointed by the provincial government.

Retiring from Council

Allan Corbett, Paramount Lodging Advisors, Vancouver, after ten years of service.

Satnam Sidhu, Re/Max Crest Realty, North Vancouver, after eight years of service.

Rosemary Barnes, Park Georgia Realty, Coquitlam, after eight years of service.

William Lim, after five years of service.

More Information About Conflicts of Interest

The February 2008 *Report from Council* newsletter contained an article entitled 'Buying Your Own Listing is a Conflict of Interest', which generated a few responses from licensees. Some of the responses suggested that the article implied there was a greater conflict of interest in circumstances when a licensee is selling their own home to a buyer when that buyer has an existing agency relationship with the licensee's related brokerage, than when a licensee is buying a property listed for sale with their related brokerage.

The article suggested, amongst other things, that in the case of a licensee wanting to buy a property listed for sale with their related brokerage, the seller should be given the option to cancel the listing agreement, while in the case of a licensee/seller selling their property to a buyer who has an agency relationship with the licensee's related brokerage, the brokerage should at no time act for that buyer and should cancel the buyer agency agreement with the buyer. The Council has been asked if it would consider eliminating this perceived inconsistency by saying that the buyer should be given the option to cancel the buyer agency agreement or, in the event there is a verbal agency relationship with the buyer, the option of withdrawing from that relationship. Assuming all other aspects of a licensee's conduct are appropriate, the Council agrees that such an approach is more consistent.

The purpose of the February 2008 article was to convey the obligations and challenges of licensees with respect to conflicts of interest that arise when a licensee acts as a principal and an agent in the same transaction.

Licensees should be aware that they have an obligation to take reasonable steps to avoid any conflict of interest. One practical way of satisfying this obligation is to avoid becoming a dual agent wherever possible by acting as

That is what happens when informed sellers and buyers agree to sign Limited Dual Agency Agreements – they allow the brokerage and its related licensees to continue to act for both parties in an impartial and objective manner.

Additional complications arise when a licensee attempts to act as a principal and as an agent for the other party in the same transaction. Not only can that licensee not be impartial and objective, but they are likely

unable to meet another fundamental obligation of an agent: the duty to not allow their own personal interest to prejudice their client's interest. Whether a licensee is selling their own property to a client, or buying their client's property, there is a very significant risk that their own personal interest will be in conflict with, and therefore will prejudice, their client's interest. Where the client is a party to a Limited Dual Agency Agreement, it must be established, on the particular facts and circumstances of each case, that the client gave their informed consent to that relationship.

In the case of *D'Atri v. Chilcott*, the court found that the following principles are applicable where a licensee is buying a client's property:

- that the relationship between a real estate agent and the person who has retained him to

an agent for one of the parties and by treating the other party as a customer. If a conflict of interest does exist, a licensee should promptly and fully disclose the conflict to the client. A fully informed client may then choose to allow the licensee to continue to act in that conflict by modifying or disapplying the obligations which can't be fulfilled because of the conflict.



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More Information About Conflicts of Interest ...*Continued from previous page*

sell his property is a fiduciary and confidential one;

- that there is a duty upon such an agent to make full disclosure of all facts within the knowledge of the agent which might affect the value of the property;

- that not only must the price paid be adequate but the transaction must be a righteous one, and the price obtained must be as advantageous to the principal as any other price that the agent could, by the exercise of diligence on his principal's behalf, have obtained from a third person, and

- that the onus is upon the agent to prove that those duties have been fully complied with.

Expanding on these principles, the court referred to other cases involving the obligations of a fiduciary when transacting with their own clients. In *Brown et al v. Premier Trust Co. et al*, it was found that "the onus is cast on them to establish the perfect fairness and equity of the transaction". They must show that Dr. Brown (the client) entered into the transaction, not through the operation of any acts on the part of Holmes (the fiduciary),

but "after full and sufficient deliberation, and with all the information which it was material for him to have in order to guide his conduct; and that he had either independent and disinterested advice, or as ample protection as such advice could have given him. In other words, they must show that they had given all reasonable advice against themselves that would have been given to Dr. Brown against a third party."

In *Charles Baker Ltd. v. Baker and Baker*, the court found that "the onus is upon the agent to prove that the transaction was entered into after full and fair disclosure of all material circumstances and of everything known to him respecting the subject-matter of the contract which would be likely to influence the conduct of his principal. The burden of proof that the transaction was a righteous one rests upon the agent, who is bound to produce clear affirmative proof that the parties were at arm's length, that the principal had the fullest information upon all material facts, and that having this information he agreed to adopt what was done."

Similar principles would apply where a

licensee is selling their own property to a client.

If a licensee decides to take such a very significant professional risk, it would appear from the *Brown* case that one way to deal with this obligation that might reduce a licensee's risk is to ensure the other party has the opportunity and time to obtain any and all independent advice they desire. This may include advice about value, the legal effect of terms or conditions, tax considerations, or any other matter about which the other party has questions. This may also result in the client deciding they want to be independently represented by a licensee engaged by another brokerage. Clients may choose to not allow a licensee or brokerage to continue to represent them when that licensee or brokerage is in a conflict of interest.

Public confidence in the profession requires that licensees not only act, but are perceived to act, with integrity. Licensees, like all professionals, will always be accountable for how they respond in situations which present a conflict of interest.

Purchasing Development Property Located Outside BC

Recent weakness in some American real estate markets and a stronger Canadian dollar have increased the number of foreign development properties being marketed in BC. The Superintendent of Real Estate reminds BC purchasers that the *Real Estate Development Marketing Act* continues to govern the marketing in BC of development properties located anywhere in the world.

Under the act, local and foreign developments must meet similar requirements in order to be marketable in BC. The developer must file a disclosure statement with the Superintendent of Real Estate before marketing begins. The disclosure statement must explain the offering

and must be provided to a purchaser before he or she enters into a purchase agreement.

Foreign property regimes may be different from BC's property regime and may not be familiar to purchasers here. Therefore, the required disclosure of development approvals, land title, and land-use restrictions is especially important for foreign developments. Additionally, all deposits received from British Columbian purchasers must be held in trust in BC by a lawyer, notary public or real estate brokerage, unless deposit insurance or an exemption has been obtained here.

The *Real Estate Development Marketing Act* provides remedies for British Columbian

purchasers. Notably, a purchase agreement is not enforceable against a purchaser by a developer who has breached the act. Each purchaser also has a right to pursue a civil claim against a developer and its directors for any misrepresentation. Additionally, any failure to comply with the act may result in a cease marketing order, administrative penalty or other regulatory action by the Superintendent of Real Estate.

A copy of the act and further information about disclosure requirements are available on the Superintendent's website at www.fic.gov.bc.ca.

Paying and Receiving Referral Fees – Part Two

The August 2007 *Report from Council* contained an article entitled 'Paying and Receiving Referral Fees'. The Council thought licensees might benefit from further information in this regard. The following are examples of two common scenarios involving the payment and receipt of referral fees between licensees. They reflect two important principles of agency: the timely disclosure to clients of relevant information, and obtaining a client's informed consent for an agent's actions. The first scenario also distinguishes between obligations that are owed to a client which, as you will see, are different to those that are owed to someone who is not a client.

1. Referring a Person Who is Not a Client

Kelowna licensee Betty Best receives a call from Sally Seller about a home Betty has listed for sale. This is the only time Betty and Sally talk. During the course of the discussion, Sally tells Betty that she wants to sell her home in Fernie before moving to Kelowna. Sally asks Betty if she knows a good real estate agent in the Fernie area. Betty tells Sally about Jim Lister, a licensee friend in Fernie. Betty calls Jim to advise him of this, and the two agree that Betty will receive a \$2,000 referral fee if Sally lists her home with Jim, and it subsequently sells. Sally lists her home for sale with Jim, the home sells, and Jim sends a \$2,000 referral fee to Betty's brokerage.

Must Betty disclose to Sally that she will receive a referral fee from Jim? No.

Both the common law and section 5-11 of the Council Rules require that a licensee must disclose to a client remuneration received as a result of providing real estate services to or on behalf of a client, whenever that remuneration is not paid directly by that client.

"Client" is defined in section 1-1 of the

Council Rules as

"Client" means, in relation to a licensee, the principal who has engaged the licensee to provide real estate services to or on behalf of the principal.

In this scenario, Sally is not a client of Betty or her related brokerage. She has not engaged Betty or her related brokerage to provide any real estate services. During the course of a single conversation, she has asked Betty if she knows a good real estate agent in Fernie. Under these circumstances, Betty's obligation to Sally is to act honestly and with reasonable care and skill (see section 3-4 of the Council Rules). Betty has no obligation to disclose to Sally that she will receive a referral fee from Jim if Sally lists her home for sale with Jim and the home sells.

Must Jim disclose to Sally that he intends to pay a referral fee to Betty? Yes.

Section 3-3(1)(f) of the Council Rules requires a licensee to disclose to a client all known material information respecting the real estate services being provided. By listing her home for sale with Jim and his related brokerage, Sally becomes a client who has engaged them to provide real estate services. Jim has agreed to pay a referral fee to Betty; that is material information which he must disclose to Sally. He must make this disclosure at a time when the information is relevant to Sally — that is before Sally agrees to enter into the listing contract. This timing is important because Sally does not have to agree to the payment of this referral fee. She may agree, or she may choose to list her home for sale with another licensee.

2. Receiving an Unanticipated Referral Fee

Eileen Lots has a client, Dave Doer, who

has just sold his home using Eileen and her related brokerage as his listing agent. Dave is interested in buying a property in White Rock, a market area that is not familiar to Eileen. He asks Eileen if she knows a good real estate agent in White Rock. Eileen refers Dave to Fred Finder and calls Fred to advise him of this referral. There is no discussion about a referral fee; Eileen neither requests nor expects to receive one.

Several months later, a cheque from Fred's brokerage arrives at the office of Eileen's brokerage, accompanied by a note from Fred to Eileen saying "Thanks for the lead on Dave. He bought two properties through me. I appreciate the referral."

Must Fred disclose to Dave that he intends to pay a referral fee to Eileen? Yes.

Dave has engaged Fred and his related brokerage to provide real estate services to help him acquire properties in White Rock. Fred and his related brokerage have an obligation to disclose to Dave all known material information respecting the real estate services being provided. Therefore, Fred must disclose to Dave the fact that he intends to pay a referral fee to Eileen. He must do so before paying the referral fee. Dave may not agree, and may even suggest that if Fred is prepared to share his commission with someone, that someone should be Dave himself.

What, if anything, must Eileen disclose to Dave? That depends.

Assuming Dave has agreed to Fred's payment of the referral fee, the answer to this depends on two factors: whether Eileen knew, or should have known, she was going to receive the referral fee, and whether Dave is still considered Eileen's client when the referral is received.

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Paying and Receiving Referral Fees ...continued from previous page

A licensee can only disclose what they know, or reasonably ought to have known at the relevant time. For example, if Eileen regularly referred clients to Fred and received referral fees for doing so, even though she did not discuss a referral fee with Fred on this occasion, she could reasonably expect to receive one. She must disclose that to Dave at the time she provides him with Fred's name. However, if this was a 'one off' referral to Fred, and, as the scenario suggests, Eileen had no reason to anticipate receiving a referral fee, there would be nothing to disclose at the time the referral was made.

If a referral fee is unexpectedly received, whether disclosure is required at that time is dependant on whether Dave is still considered Eileen's client at the time of receipt. If the answer is 'no'; that is, neither Eileen nor her brokerage have been engaged to provide real estate services to Dave in the intervening period, nor is there an ongoing client relationship with Dave,

then disclosing receipt of the unexpected referral fee is not required.

However, if Eileen or her brokerage have been engaged by Dave to provide real estate services in the intervening period or they have an ongoing client relationship with Dave, disclosure of this referral fee, even though it was not expected, is required at the time of its receipt. If Fred has made the required disclosure, Dave will have already agreed to the payment of this referral fee to Eileen, regardless of whether Eileen is required to disclose having received it. Eileen's disclosure, if required, will verify information Dave has already been told by Fred.

If the situation dictates that Eileen must also disclose, this may seem an example of 'too much disclosure'. Why should Dave receive the same information from two different licensees? It is important to realize that Fred and Eileen have to disclose for

different reasons. Fred's obligation, both at common law and as described in section 3-3(1)(f) of the Council Rules, is to disclose to his client Dave everything material about the real estate services being provided. The fact that he intends to pay a referral fee to Eileen is material. Eileen's obligation, both at common law and as described in section 5-11(1) of the Council Rules, is to disclose to her client Dave remuneration she has received as a result of providing real estate services to or on behalf of him, when that remuneration has been paid by someone other than Dave.

For further information about the payment or receipt of referral fees, including more examples, please review the August 2007 *Report from Council*, which is available on the Council's website at www.recbc.ca/pdf/RFC/2007/RFCAugust2007.pdf. Licensees with any questions about this may contact the Council office at 604-683-9664, toll-free 1-877-683-9664 or email info@recbc.ca.

Licensees Must Give Notice of Discipline, Bankruptcy, Criminal Proceedings

Section 2-21 of the Council Rules states that:

(2) A licensee must promptly notify the council, in writing, if any of the following circumstances apply:

(a) the licensee is subject to any disciplinary or regulatory proceedings in which the licensee may be or has been made subject to a discipline sanction under legislation in British Columbia or another jurisdiction regulating

(i) real estate, insurance or securities activities, or

(ii) mortgage brokers, accountants, notaries or lawyers;

(b) the licensee has any court order or judgment made against the licensee in relation to

(i) real estate services,

(ii) a dealing in insurance, mortgages or securities, or

(iii) misappropriation, fraud or breach of trust;

(c) any business that the licensee owns, or of which the licensee has been a director, officer or partner at any time during the past 2 years, has any court order or judgment made against the business in relation to

(i) real estate services,

(ii) a dealing in insurance, mortgages or securities, or

(iii) misappropriation, fraud or breach of trust;

(d) the licensee is charged with or convicted of an offence under a federal or provincial enactment or under a law of any foreign jurisdiction, excluding

(i) highway traffic offences resulting only in monetary fines or demerit points, or both, and

(ii) charges initiated by a violation ticket as defined in the *Offence Act* or by a ticket as defined in the *Contraventions Act* (Canada);

(e) the licensee is the subject of any bankruptcy,

insolvency or receivership proceedings;

(f) any business that the licensee owns, or of which the licensee has been a director, officer or partner at any time during the past 2 years, is the subject of any bankruptcy, insolvency or receivership proceedings.

(3) In addition to providing a written notice, the licensee must provide

(a) particulars, and

(b) any additional information or documentation, as requested by the council.

(4) In the case of notice required to be provided by an associate broker or representative, the licensee must give a copy of the notice under subsection (2) to the managing broker of the related brokerage.

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

Authorization to Pay Trust Money to Conveyancing Lawyer or Notary

The BCREA Contract of Purchase and Sale addresses deposits and states, in part:

"The party who receives the Deposit is authorized to pay all or any portion of the Deposit to the Buyer's or Seller's conveyancer (the "conveyancer") without further written direction of the Buyer or Seller, provided that: (a) the conveyancer is a Lawyer or Notary; (b) such money is to be held in trust by the conveyancer as stakeholder pursuant to the provisions of the *Real Estate Services Act*, pending the completion of the transaction and not on behalf of any of the principals to the transaction; and (c) if the sale does not complete, the money should be returned to such party as stakeholder or paid into court."

The effect of this wording is to allow the brokerage who holds a deposit in trust as a stakeholder to forward these funds to the conveyancer without having to obtain a separate written release from both the seller

and the buyer.

There are two important issues to note:

- This pre-authorization only applies to a release of funds to a lawyer or notary. It does not apply to the release of funds from trust for any other reason or to any other party.

- This clause does not bind the conveyancer to hold the funds in trust as a stakeholder pursuant to the provisions of the *Real Estate Services Act* because the conveyancer is not a party to the Contract of Purchase and Sale. An agent who releases funds to a lawyer or notary under this authority must still clarify the stakeholder role directly with the conveyancer. This can be accomplished by using the following sample wording in a covering letter to the conveyancer:

Authorization to Pay Trust Money to Lawyer or Notary Clause

Enclosed is \$(amount) being the deposit

money in the above-noted transaction. This money is to be held by you until completion on the following trust conditions:

- 1. you will hold this money as a stakeholder pursuant to the provisions of the Real Estate Services Act and not on behalf of any of the principals to the transaction;*
- 2. upon completion, you will disburse the money as provided in the Contract of Purchase and Sale and, should the sale not complete, you will, upon request, repay the money to us in trust as stakeholder; and*
- 3. if you are unable to comply with these trust conditions, you will return the said money to our office.*

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

Holding Deposits Awaiting a Future Event

Page 70 of the *Licensee Practice Manual* (6th Edition) contains some incorrect information related to the handling of deposits. The first paragraph on that page states, in part:

"While RESA requires the deposit to go into trust immediately, the parties can mutually agree to waive this requirement. It is important that their agreement be clearly stated on the contract."

Later on that page the following paragraph is found:

"(c) the Contract of Purchase and Sale may provide that the representative will hold the buyer's deposit cheque and deposit it upon acceptance. The following clause should be used:

Deposit to be Placed in Trust Clause

"Deposit to be placed in trust upon acceptance of this offer."

This information is incorrect. Section 27 of RESA requires that when a deposit is given to a licensee, that licensee must promptly deliver

it to the licensee's related brokerage, and, in turn, the brokerage must promptly place it in the brokerage's trust account. If that is not what the parties wish, the parties must establish, by way of a written agreement separate from the contract, what the licensee and related brokerage are to do with the deposit.

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

The REP Sheet

The Council's Relicensing Education Program (REP) requires licensees to complete two courses during the licensees' two-year licence period as a condition of continued licensing. REP took effect on January 1, 2007. This means that when licensees renew their licence in either 2007 or 2008, licensees will have until their licence expiry date (two years) to complete two REP courses in order to renew their licence in either 2009 or 2010 respectively.

In order to remind licensees of the REP requirements, the Council began sending a REP reminder letter to licensees, commencing in January 2008. This is particularly important as licensees who are renewing their licences in January 2009, or later, are at least half-way through their two-year licence cycle.

The Council urges all licensees to complete their course requirements as soon as possible to avoid an anticipated last minute rush. Leaving it to the last minute could mean that courses are unavailable and may result in licensees not fulfilling their REP requirements. **Licensees are reminded that licence renewal is dependant on completing the REP course requirements! If you do not complete the REP requirements within your two-year licence cycle, your licence may not be renewed.**

REP Requirements

- Licensees are responsible to complete 2 courses; 1 elective and 1 mandatory course during their licence period. The current mandatory course requirement for REP is "What Brokerages and REALTORS® Need to Know About Agency". Please note that individuals licensed for rental property management only or rental and strata management only may substitute a second REP approved elective course for the mandatory agency course "What Brokerages and REALTORS® Need to Know About Agency".
- The first REP cycle will run from the effective date of licence issuance in 2007 or 2008 to licence expiry date in 2009 or 2010.

There are two exemptions for the first REP cycle as follows:

Individuals licensed to provide only strata management services are exempted from completing the mandatory REP course but are required to complete one elective course. Individuals licensed as managing brokers to provide strata management services only are exempted from both the mandatory REP course as well as the REP elective course requirement.

REP Approved Courses

Licensees may choose their elective course requirement from a list of approved REP Courses. **Licensees should note that a complete list of courses is available on the REP page on the Council's website at www.recbc.ca/licensee_info/rep.htm.**

REP courses are available from a number of sources, including the following course providers:

- BC Real Estate Association
- UBC Real Estate Division
- Langara College Real Estate
- BOMI
- PAMA Continuing Education
- CCIM

General Program Information

- Licensees will satisfy their REP elective course requirements upon completion of one REP approved full day rated elective course. Two REP approved half day rated courses are equivalent to one REP approved elective course.
- The Applied Practice Courses, as well as the licensing supplemental courses and the Brokers Licensing Course, will satisfy the REP elective course requirement as they are considered licence upgrade courses.
- Licensees who choose to take one of the supplemental licensing courses or the Brokers Licensing Course must also successfully complete the applicable examination in order to obtain REP credit.
- Supplemental licensing courses, the Brokers Licensing Course or one of the courses in the Diploma Program in Urban Land Economics will receive a maximum of one full day rated elective course credit towards

the REP requirements.

- Licensees will not receive credit for a REP approved course completed as a result of disciplinary action taken by the Real Estate Council.
- Only those real estate-related institutes and associations, who have been approved by the Real Estate Council of BC as having the expertise and training to deliver REP courses/seminars for real estate practitioners, may offer approved REP courses/seminars for real estate licensees to take in order to maintain a real estate licence. No individual course providers will be approved at this time.
- The Council is mindful of BCREA's PDP and has designed REP to ensure that its course list contains many of the courses that are being offered through the various boards, including the mandatory course.

Record Keeping and Reporting

- Licensees must keep proof of completed education and attendance records in a specific education file along with sufficient information about the courses, including completion certificates and marks. These records must be kept for five years from the renewal date for which the education was used as they may be subject to an audit of reported education.
- Licensees will report on the REP coursework completed at the time of licence renewal and certify that the information they have provided is accurate.
- Should a licensee who is subject to an audit not be able to provide documentary evidence of course completion reported on a licence application, the Council may take disciplinary action, including terminating the licence until such time as the required education has been completed.

Further Information

Licensees who are not sure about their REP requirements or have any questions are encouraged to contact Robin Rebeiro (rrebeiro@recbc.ca) or Amy Lamb (alamb@recbc.ca) at the Council office at 604-683-9664, toll-free 1-877-683-9664.

Revised Discipline Publication Policy Statement

The Council, at its April 28, 2008 meeting, approved a revised version of its Discipline Publication Policy Statement to take effect July 1, 2008. Licensees with questions may contact the Council at 604-683-9664, toll-free 1-877-683-9664 or email info@recbc.ca.

Informal Orders - Letters of Warning

As Letters of Warning are not considered disciplinary orders under section 47 of the *Real Estate Services Act* (RESA), they are not published in the *Report from Council* newsletter or posted on the Disciplinary Decisions page on the Council's website (www.recbc.ca). Letters of Warning are, however, available to members of the public upon request 30 days from the date they are issued, if not appealed by the licensee(s). Members of the public are advised that Letters of Warning are issued when the Council's Complaints Committee has decided that there has only been a minor or technical contravention of RESA, the Regulations or the Council Rules and that no member of the public has been harmed. In these circumstances, no hearing will be held. Members of the public making an inquiry about a Letter of Warning are advised of the category of licence the individual held when the Letter

of Warning was issued. Letters of Warning relating to audit files are available by way of a request under the *Freedom of Information and Protection of Privacy Act*.

Formal Orders

Section 4.3 of the Real Estate Services Regulation states that orders under section 47 of RESA must be published on the Council's website (www.recbc.ca) and, in addition, may be published by any method the Council considers appropriate.

Discipline decisions are posted in the Disciplinary Decisions section of the Council's website as follows:

- Licence reprimands [including those with multiple sanctions (e.g. courses, fines, etc.)] will be posted for a period of one year and then removed.
- Orders made under section 43(2)(d) to (i) of RESA will be posted for a period of one year and then removed.
- Licence suspensions of less than one year [including those with multiple sanctions (e.g. courses, fines, etc.)] will be posted for a period of five years and then removed.
- Licence suspensions of one year or greater [including those with multiple sanctions (e.g.

courses, fines, etc.)] and licence cancellations will be posted in perpetuity.

- Orders in urgent circumstances and orders to freeze property will be posted in perpetuity or until the order is rescinded.

The Council also publishes disciplinary decisions resulting from a discipline hearing or consent order in its *Report from Council* newsletters. Starting in 2006, the Council began posting its *Report from Council* newsletters commencing with the February 2004 edition on the Council's website.

In situations where a licensee permanently resigns from the industry in the face of a disciplinary proceeding, a notice is included in the *Report from Council* newsletter and posted in perpetuity in the Withdrawals from the Industry section on the Council's website.

In the event of a licence suspension of more than one year, a licence cancellation, an order in urgent circumstances, or an order to freeze property, the Council may also issue a media release and/or paid advertisement in the appropriate media outlet.

In all cases, posting on the Council's website and publication in the *Report from Council* newsletter is to occur after any appeal period has expired.

Notice of Rescission Order – Albert Waiming Luk

Whereas on September 20, 2005 an Order was made by a Discipline Committee of the Real Estate Council suspending the licence of Albert Waiming Luk in the public interest under section 45(2) of the Real Estate Services Act, and whereas it is no longer necessary to suspend the licence of Albert Waiming Luk, it was ordered by the Council that the Order dated September 20, 2005 be rescinded effective March 25, 2008.

Notice of Rescission Order – Dedicated Property Management Ltd., Deborah Jo Acheson and Kim Wayne Lem

Whereas on March 28, 2006 an Order was made by a Discipline Committee of the Real Estate Council suspending the licences of Dedicated Property Management Ltd., Deborah Jo Acheson and Kim Wayne Lem in the public interest under section 45(2) of the Real Estate Services Act, pursuant to section 45(4)(a) of the Real Estate Services Act, it was ordered by the Council that the Order dated March 28, 2006 be rescinded effective March 28, 2008.

Disciplinary Decisions

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

COMPLAINT: Contravention of sections 35(1)(a) [professional misconduct] and 6(2)(b) [managing broker responsibilities] of the *Real Estate Services Act*, sections 3-1(1)(a) and (b) [managing broker responsibilities], 3-1(3) [managing broker responsibilities], 7-7(1) [annual financial statements, accountant's report and brokerage activity report], 8-1(1) and (2) [financial records], and 8-3(c) and (d) [pooled trust account records] of the Council Rules

ISSUE: Randall C. Lewis Company Ltd., Richmond, currently unlicensed, which, while licensed as a brokerage, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that it contravened section 7-7(1) of the Council Rules in that it failed to file an Accountant's Report with the Council by the prescribed date.

ISSUE: Randall Charles Frederick Lewis, currently unlicensed, who, while licensed as managing broker, Randall C. Lewis Company Ltd., Richmond, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he:

- (a) failed to fulfill 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*;
- (b) contravened sections 3-1(1)(a) and (b) and 3-1(3) of the Council Rules in that he failed to ensure that the said Accountant's Report was filed with the Real Estate Council on or before January 31, 2007;
- (c) contravened sections 8-1(1) and (2), and 8-3(c) and (d) of the Council Rules in that he failed to ensure that the brokerage kept proper

books and records including separate trust ledgers for each principal of the brokerage and proper monthly trust liability and asset reconciliations;

(d) failed to sufficiently respond to requests by the Council for books and records relating to the adequacy of trust funds held by the brokerage;

(e) failed to provide a client with copies of tenancy agreements relating to properties that were being managed by the brokerage on behalf of the client, despite the client's request for those documents; and

(f) failed to properly account for, collect and remit in a timely manner rental monies held on behalf of a client relating to properties managed by the brokerage on behalf of such client.

RESULT: Randall C. Lewis Company Ltd.'s licence was cancelled as of September 30, 2007 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 Randall C. Lewis Company Ltd., and a Consent Order was issued.

RESULT: Randall Charles Frederick Lewis's licence as a managing broker was cancelled as of September 30, 2007 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 Randall Charles Frederick Lewis, and a Consent Order was issued. Further, any application by Randall Charles Frederick Lewis for relicensing as a managing broker would be subject to a qualification hearing and subject to the successful completion of the Broker's Licensing Course. As of September 30, 2007, Mr. Lewis was eligible to be licensed as an associate broker, subject to the following conditions: (a) Mr. Lewis' licence as an associate broker be suspended for ninety (90) days from and including October

1, 2007 to and including December 29, 2007; (b) Mr. Lewis will not act as a managing broker nor will he be a signatory on any brokerage trust account. Upon relicensing, Mr. Lewis must successfully complete the disciplinary education assignment applicable to Chapter 2 (The *Real Estate Services Act*) of the Real Estate Trading Services Licensing Course, enroll in and attend the first available CPE course "Professionalism It Pays! Be Safe or Be Sued!" and pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of sections 35(1)(a) [professional misconduct], 35(1)(c) [wrongful taking or deceptive dealing] and 35(1)(d) [incompetence] of the *Real Estate Services Act*

ISSUE: Kenneth Edward Heppner, representative, West Coast Realty Ltd. dba Sutton Group-West Coast Realty, Langley, while licensed with Shewan Real Estate Ltd. dba Royal LePage-Wolstencroft, Langley, committed acts of deceptive dealing and, as a result, committed professional misconduct under section 35(1)(c) of the *Real Estate Services Act* in that he:

(a) in connection with the sale of a property situated on 36 Avenue, Surrey, ("Property") and while acting as a limited dual agent:

- (i) misled the sellers' solicitor by causing him to believe that the sellers knew in a timely way of the buyer's assignment of the Contract when Mr. Heppner knew that this was untrue; and
- (ii) assisted the buyer and the assignee with the assignment of the Contract without disclosing this fact to the sellers and obtaining their consent that he do so;

(b) while acting on behalf of a company, Mr. Heppner sent an unsigned document purporting to be a contract assigning the right to purchase a property from an assignor to an assignee for an assignment fee plus reimbursement of a deposit, when the assignor had no legal interest in the property and Mr. Heppner knew or ought to have known this fact;

(c) in connection with the sale of a property situated on 192nd Street, Surrey and while acting as a limited dual agent, he misled his managing broker by stating that he had had nothing to do with the assignment of the Contract when Mr. Heppner had, in fact, assisted the buyer and the assignee with the assignment of the Contract; and
(d) in connection with the sale of a property situated on 194th Street, Surrey, and while acting as a limited dual agent, he misled his managing broker by stating that he had had nothing to do with the assignment of the Contract when Mr. Heppner had, in fact, assisted the buyer and the assignee with the assignment of the Contract.

Mr. Heppner demonstrated incompetence and, as a result, committed professional misconduct within the meaning of section 35(1)(d) of the Act in that he:

(a) in connection with the sale of a property situated on 36 Avenue, Surrey, and while acting as a limited dual agent:
(i) failed to advise the sellers in a timely way that the buyer had assigned the Contract; and
(ii) failed to advise the sellers to obtain independent legal advice about the buyer's assignment of the Contract;
(b) in connection with the sale of a property situated on 192nd Street, Surrey, and while acting as a limited dual agent:
(i) prepared an addendum to the Contract removing the subject clauses, which was signed by a person at a time when Mr. Heppner knew that the person was not an authorized signatory of the buyer;
(ii) prepared a second addendum to the Contract removing the subject clauses, which was signed by an authorized signatory of the buyer;
(iii) failed to advise the seller in a timely way that the buyer had assigned the Contract;
(iv) failed to advise the seller to obtain independent legal advice about the buyer's assignment of the Contract; and
(v) assisted the buyer and the assignee with the assignment of the Contract without disclosing this fact to the sellers and obtaining their consent that he do so;

(c) in connection with the sale of a property situated on 194th Street, Surrey and while acting as a limited dual agent:

(i) failed to advise the sellers in a timely way that the buyer had assigned the Contract;
(ii) failed to advise the sellers to obtain independent legal advice about the buyer's assignment of the Contract; and
(iii) assisted the buyer and the assignee with the assignment of the Contract without disclosing this fact to the sellers and obtaining their consent that he do so;
(d) in connection with the proposed sale of three properties situated on 148th Street, Surrey:
(i) provided the sellers' representative with a cheque for the deposit required under the Contract, which Mr. Heppner stated was a certified cheque, when he knew or ought to have known it was not certified;
(ii) told the buyer, after the buyer had attempted to certify the cheque and had been told by the bank that there were insufficient funds for this purpose, to deposit the cheque in any event on the basis that it would clear, when he knew or ought to have known that this was untrue;
(iii) failed to inform his managing broker that the buyer's deposit cheque had not cleared the bank; and
(e) in connection with the sale of a property situated on 184th Street, Surrey and while acting as a limited dual agent:
(i) failed to advise the sellers to obtain independent legal advice about the buyer's assignment of the Contract;
(ii) failed to deliver the Contract to his brokerage in a timely way.

Mr. Heppner demonstrated incompetence and, as a result, committed professional misconduct within the meaning of sections 35(1)(a) and 35(1)(d) of the Act and contravened the Act or the Council Rules in that he:

(a) in connection with the sale of a property situated on 36 Avenue, Surrey and while acting as a limited dual agent, failed to provide his managing broker with either the originals or copies of the records in his possession, which Mr. Heppner had prepared or which had been prepared on his behalf, relating to the assignment of the Contract;

(b) in connection with the sale of a property situated on 192nd Street, Surrey and while acting as a limited dual agent:

(i) failed to submit the second addendum to his managing broker; and
(ii) failed to provide his managing broker with either the originals or copies of the records in his possession, which he had prepared or which had been prepared on his behalf, relating to the assignment of the Contract;
(c) in connection with the sale of a property situated at 194th Street, Surrey and while acting as a limited dual agent, failed to provide his managing broker with the originals or copies of the records in his possession, which he had prepared or which had been prepared on his behalf, relating to the assignment of the Contract; and
(d) in connection with the proposed sale of three properties situated on 148th Street, Surrey, failed to inform his managing broker of his activities in connection with the proposed sale of the Property.

RESULT: Kenneth Edward Heppner was suspended for one hundred and eighty (180) days from April 16, 2008 to October 12, 2008 (inclusive) for professional misconduct as described above, after which he will be eligible to be relicensed as a representative provided that he has satisfied the following terms: as a condition of relicensing, Mr. Heppner must, prior to relicensing, complete the Real Estate Trading Services Licensing Course and successfully pass the examination, enroll in and attend the CPE course "Legal Update", enroll in and attend the Residential Trading Services Applied Practice Course, and pay enforcement expenses to the Council in the amount of \$7,453.00.

COMPLAINT: Contravention of sections 35(1)(a) [professional misconduct] and 35(1)(d) [incompetence] of the *Real Estate Services Act*, sections 3-2(1) and 3-2(2) [representative responsibilities], 3-3(1)(a) and 3-3(1)(j) [duties to clients], and 5-9 [disclosure of interest in trade] of the Council Rules

ISSUE: James Brian Bell, representative, Statesmen Realty Corporation dba Realty

Executives of Kelowna, while licensed with Lakefront Realty (2002) Ltd. dba Sutton Group - Lakefront Realty, Kelowna, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening section 35(1)(d) of the *Real Estate Services Act* in that as buyer of a property he:

- (a) contravened section 3-3(1)(j) of the Council Rules in that he acted in a conflict of interest in providing limited dual agency when he was a principal in the transaction and did not withdraw from offering agency to the sellers;
- (b) contravened section 3-3(1)(a) of the Council Rules by failing to act in the best interest of the seller in that the lease agreement to purchase he drafted did not include any end date by which the licensee would either have to complete the transaction or the deal would collapse;
- (c) contravened section 3-2(1) of the Council Rules in that he failed to provide his managing broker with a copy of the lease agreement to purchase;
- (d) contravened section 3-2(2) of the Council Rules in that he failed to keep his managing broker informed of the activities he was taking with respect to the transaction; and
- (e) failed to comply with section 5-9 of the Council Rules in that he did not complete the disclosure of interest in trade in relation to the transaction.

RESULT: James Brian Bell was suspended for fourteen (14) days from May 7, 2008 to May 20, 2008 (inclusive) for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and James Brian Bell, and a Consent Order was issued. Further, James Brian Bell must successfully complete the disciplinary education assignment applicable to Chapter 10 (The Law of Contract) and Chapter 12 (Law of Agency) of the Real Estate Trading Services Licensing Course and that he either enroll in and attend the first available CPE Course "Professionalism It Pays! Be Safe or Be Sued!", "The *Real Estate Services Act* – Everything You Need to Know", or he successfully complete the

disciplinary education assignment applicable to Chapter 2 (The *Real Estate Services Act*) of the Real Estate Trading Services Licensing Course, along with the two chapters previously noted. Further, James Brian Bell must pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of sections 35 [professional misconduct] and 35(1)(a) [contravention of Act or regulations or rules] of the *Real Estate Services Act* and sections 3-3(1)(a) [duties to clients], 3-3(1)(i) [conflict of interest], 3-3(1)(j) [disclosure of conflict of interest], 3-4 [duty to act honestly and with reasonable care and skill] and 5-9 [disclosure of interest in trade] of the Council Rules

ISSUE: Alice Theresa Thompson, representative, Check Realty (1998) Ltd. dba Re/Max Check Realty, Campbell River, while licensed with Coast Realty Group (Campbell River) Ltd., Campbell River, committed professional misconduct within the meaning of section 35 of the *Real Estate Services Act* in that she:

- (a) contravened section 35(1)(a) of the Act, sections 3-3(1)(a) and 3-4 of the Council Rules in that she, in the sale of the mobile home from the seller to the buyer: in drafting the contract, failed to provide for pad rental and pad assignment, failed to refer to the rules of the mobile home park, failed to provide where the deposit would be delivered to, and failed to provide for appropriate security of the loan to be made by the seller to the buyer; and
- (b) contravened sections 3-3(1)(i), 3-3(1)(j) and 5-9 of the Council Rules in that she, in the sale of a property from the seller to the buyer:
 - (i) failed to properly and fully disclose to the seller that she was acquiring an interest in the property, directly or indirectly; and
 - (ii) acted as a limited dual agent when at the same time she was acquiring an interest in the property, directly or indirectly.

RESULT: Alice Theresa Thompson was suspended for twenty-one (21) days from May 21, 2008 to June 10, 2008 (inclusive) for professional misconduct as described above after an Agreed Statement of Facts, Proposed

Acceptance of Findings and Waiver was entered into between the Real Estate Council and Alice Theresa Thompson, and a Consent Order was issued. Further, Alice Theresa Thompson was ordered to successfully complete the disciplinary education assignments applicable to Chapter 2 (The *Real Estate Services Act*) and Chapter 10 (Law of Contract) of the Real Estate Trading Services Licensing Course, and pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of sections 35 [professional misconduct] and 35(1)(d) [incompetence] of the *Real Estate Services Act*, sections 3-1 [managing broker responsibilities] and 3-3(1) [duties to clients] of the Council Rules

ISSUE: Suzanne Marie Judge, representative, Key Realty Group Ltd., Nanaimo, committed professional misconduct within the meaning of section 35 of the *Real Estate Services Act* by contravening section 35(1)(d) of the *Real Estate Services Act* and section 3-3(1) of the Council Rules in that she:

- (a) failed to advise the seller to make the offer subject to the seller successfully subdividing the property;
- (b) failed to identify in the legal description of the property or in the Contract of Purchase and Sale that it was only a portion of the property which was subject to the Contract of Purchase and Sale;
- (c) failed to ensure that there was a written agreement in place relating to the buyers' access to the property prior to completion setting out clearly the specific activities that the buyers were permitted to undertake prior to completion; and
- (d) failed to ensure there was a written agreement in place between the parties setting out the terms under which they agreed to an extension of the completion date of the subject contract.

ISSUE: Richard Mitchell, managing broker, Key Realty Group Ltd., Nanaimo, committed professional misconduct within the meaning of section 35(1) of the *Real Estate Services Act* by contravening section 3-1 of the Council Rules

in that he failed to ensure that the said business of the brokerage was carried out competently and in accordance with the Act, Regulations, Rules and/or Bylaws.

RESULT: Suzanne Marie Judge was suspended for fourteen (14) days from June 4, 2008 to June 17, 2008 (inclusive) for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Suzanne Marie Judge, and a Consent Order was issued. Further, Suzanne Marie Judge must successfully complete the disciplinary education assignment applicable to Chapter 12 (Law of Agency) of the Real Estate Trading Services Licensing Course, enroll in and attend the first available CPE course "Professionalism It Pays! Be Safe or Be Sued!" and "Legal Update", and successfully complete the next available Unit 1 "Agency Disclosure, Privacy and the Code of Ethics" of the British Columbia Real Estate Association Residential Trading Services Applied Practice Course. Further, Suzanne Marie Judge and Richard Mitchell are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00.

RESULT: Richard Mitchell was reprimanded for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Richard Mitchell, and a Consent Order was issued. Further, Richard Mitchell must successfully complete the disciplinary education assignment applicable to Chapter 11 (Contracts for Real Estate Transactions) of the Real Estate Trading Services Licensing Course, enroll in and attend the first available CPE course "Professionalism It Pays! Be Safe or Be Sued!" and "Legal Update", and successfully complete the next available Unit 7-8 "Contract of Purchase and Sale" of the British Columbia Real Estate Association Residential Trading Services Applied Practice Course. Further, Richard Mitchell and Suzanne Marie Judge are jointly and severally liable to pay enforcement expenses to the Council in

the amount of \$750.00.

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

ISSUE: Lana Michelle Riva, representative, Coast Country Properties Ltd. dba Royal LePage in the Comox Valley, Courtenay, committed professional misconduct within the meaning of section 35(1) of the *Real Estate Services Act* by contravening section 35(1) (a) of the Act and sections 3-3 and 3-4 of the Council Rules in that she:

- (a) acted in a conflict of interest when, while one of the buyers in the transaction, she acted for herself and another buyer in the same transaction;
- (b) failed to ensure that the extension of the completion date was in writing and signed by both parties; and
- (c) failed to ensure that there was a written agreement in place relating to the buyers' access to the property prior to completion setting out clearly the specific activities that the buyers were permitted to undertake prior to completion.

ISSUE: Gregory Hugh Hart, managing broker, Coast Country Properties Ltd. dba Royal LePage in the Comox Valley, Courtenay, committed professional misconduct within the meaning of section 35(1) of the *Real Estate Services Act* by contravening section 3-1 of the Council Rules in that he failed to ensure that the said business of the brokerage was carried out competently and in accordance with the Act, Regulations, Rules and/or Bylaws.

RESULT: Lana Michelle Riva was suspended for seven (7) days from July 2, 2008 to July 8, 2008 (inclusive) for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Lana Michelle Riva, and a Consent Order was issued. Further, Lana

Michelle Riva must successfully complete the disciplinary education assignment applicable to Chapter 12 (Law of Agency) of the Real Estate Trading Services Licensing Course, enroll in and attend the first available CPE course "What Brokerages and Realtors Need to Know About Agency" and successfully complete the next available Unit 1 "Agency Disclosure, Privacy and the Code of Ethics" of the British Columbia Real Estate Association Residential Trading Services Applied Practice Course. Further, Lana Michelle Riva and Gregory Hugh Hart are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00.

RESULT: Gregory Hugh Hart 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 Gregory Hugh Hart, and a Consent Order was issued. Further, Gregory Hugh Hart must successfully complete the disciplinary education assignment applicable to Chapter 11 (Contracts for Real Estate Transaction) of the Real Estate Trading Services Licensing Course, enroll in and attend the first available CPE course "Legal Update", and successfully complete the next available Unit 7-8 "Contracts of Purchase and Sale" of the British Columbia Real Estate Association Residential Trading Services Applied Practice Course. Further, Gregory Hugh Hart and Lana Michelle Riva are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of sections 35(1) [professional misconduct] and 7(5) (a) [provision of real estate services by unlicensed representative] of the *Real Estate Services Act* and section 3-1 [managing broker responsibilities] of the Council Rules

ISSUE: Holmes Realty Ltd., Sidney, committed professional misconduct within the meaning of section 35(1) of the *Real Estate Services Act* in that it permitted an unlicensed representative to provide real estate services on behalf of the brokerage from on or about March 1, 2001 to

March 6, 2007, contrary to section 7(5)(a) of the *Real Estate Services Act*.

ISSUE: Michele Florentine Holmes, managing broker, Holmes Realty Ltd., Sidney, committed professional misconduct within the meaning of section 35(1) of the *Real Estate Services Act*, by contravening section 3-1 of the Council Rules in that she

(a) failed to ensure the business of the brokerage was carried out competently and in accordance with the Act and section 3-1 of the Council Rules in that she permitted a person, while unlicensed, to provide real estate services on behalf of the brokerage; and
(b) failed to follow up sufficiently to ensure that the said person had renewed her licence when required.

RESULT: Holmes Realty Ltd. 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 Holmes Realty Ltd., and a Consent Order was issued. Further, Holmes Realty Ltd. and Michele Florentine Holmes are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00.

RESULT: Michele Florentine Holmes was suspended as a managing broker for seven (7) days from May 28, 2008 to June 3, 2008 (inclusive) for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Michele Florentine Holmes, and a Consent Order was issued. Michele Florentine Holmes was immediately eligible to be licensed as an associate broker or representative during the suspension. Further, Michele Florentine Holmes and Holmes Realty Ltd. are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of section 35(1) (a) [professional misconduct] of the *Real Estate Services Act* and sections 3-3(1)(a)(i)

[duties to clients] and 3-4 [duty to act honestly and with reasonable care and skill] of the Council Rules

ISSUE: John Edgar Isaac, representative, Homelife Merritt Real Estate Ltd., Merritt, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening sections 3-3(1) (a)(i) and 3-4 of the Council Rules in that while acting as a limited dual agent in connection with the sale of a residential property he:

(a) offered to purchase the property jointly with a business partner without first contacting certain prospective buyers to whom he had earlier provided representation in connection with their attempted purchase of the property to obtain their informed consent to his intended course of action; and

(b) represented the seller and his co-buyer of the property in a transaction in which he was a principal.

RESULT: John Edgar Isaac was suspended for seven (7) days from May 21, 2008 to May 27, 2008, (inclusive) for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and John Edgar Isaac, and a Consent Order was issued. Further, John Edgar Isaac must successfully complete the disciplinary education assignments applicable to Chapter 2 (The *Real Estate Services Act*) and Chapter 9 (Professional Ethics) of the Real Estate Trading Services Licensing Course, enroll in and attend the first available CPE course "What Brokerages and Realtors Need to Know About Agency" and pay enforcement expenses to the Council in the amount of \$750.00.

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

ISSUE: William Ernest Thompson, representative, Rocky Mountain Realty Ltd., Invermere, committed professional misconduct

within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening section 3-4 of the Council Rules in that, while acting as representative for the buyers of the property, he:

(a) failed to provide the buyers with a copy of the Property Disclosure Statement ("PDS") prior to the buyers entering into the contract;
(b) failed to review the PDS with the buyers and/or to properly inform them as to the significance and/or consequences of the contents of the PDS, including the refusal of the seller's representative to answer any questions set out in the PDS form, or to make any representations concerning the condition of the property, and the seller's statements written on the PDS, "As is, Where is" and "Seller has never lived in the house" and "estate sale"; and/or

(c) failed to include a clause in the Contract of Purchase and Sale that the contract was subject to the buyers approving the PDS.

RESULT: William Ernest Thompson was suspended for seven (7) days from May 28, 2008 to June 3, 2008 (inclusive) for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and William Ernest Thompson, and a Consent Order was issued. Further, William Ernest Thompson was ordered to successfully complete the disciplinary education assignments applicable to Chapter 5 (Professional Liability of Real Estate Licensees) and Chapter 9 (Professional Ethics) of the Real Estate Trading Services Licensing Course, to enroll in and attend the next available CPE course, "Legal Update" or "Professionalism It Pays! Be Safe or Be Sued!", and to pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of section 35(1) [professional misconduct] of the *Real Estate Services Act* and section 5-3 [signing agreements on behalf of clients] of the Council Rules

ISSUE: Susan Vee-Shui Zee, representative, Royal Pacific Realty Corp., Vancouver,

committed professional misconduct within the meaning of section 35(1) of the *Real Estate Services Act* by contravening section 5-3 of the Council Rules in that she signed an addendum with respect to a Contract of Purchase and Sale of property on behalf of her client, the seller, and in the name of her client, on the verbal instructions of her client but without first obtaining her client's written authorization.

RESULT: Susan Vee-Shui Zee was suspended for seven (7) days from May 28, 2008 to June 3, 2008 (inclusive) for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Susan Vee-Shui Zee, and a Consent Order was issued. Further, Susan Vee-Shui Zee was ordered to pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of sections 35(1)(a) [professional misconduct], and 7(3) [providing real estate services other than on behalf of the brokerage] of the *Real Estate Services Act*, and section 3-2(2) [keeping managing broker informed] of the Council Rules

ISSUE: Edmond Kwok Wa Yu, representative, Royal Pacific Realty Corp., Vancouver, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate*

Services Act by contravening section 7(3) of the Act and section 3-2(2) of the Council Rules in that he, in the rental of property:

- (a) provided rental property management services to an individual separate from his related brokerage, and
- (b) failed to keep his managing broker informed of the rental property management services being provided to the individual.

RESULT: Edmond Kwok Wa Yu 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 Edmond Kwok Wa Yu, and a Consent Order was issued. Further, Edmond Kwok Wa Yu was ordered to pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of sections 35(1)(a) [professional misconduct], 6(2) [brokerages must have managing broker] and 7(5) [relationship between brokerages and other licensees] of the *Real Estate Services Act*, and section 3-1 [managing broker responsibilities] of the Council Rules

ISSUE: Royal Pacific Realty (Kingsway) Ltd., Vancouver, committed professional misconduct under section 35(1)(a) of the *Real Estate Services Act* in that it provided real estate services through an unlicensed

individual during the period of December 19, 2005 to January 11, 2006, contrary to section 7(5) of the *Real Estate Services Act*.

ISSUE: Tak Kun Fung, managing broker, Royal Pacific Realty (Kingsway) Ltd., Vancouver, committed professional misconduct under section 35(1)(a) of the *Real Estate Services Act* in that having been advised by a licensee that he did not have the money to renew his expired licence, Tak Kun Fung failed to take adequate steps to ensure the licensee, who was unlicensed from December 19, 2005 to January 11, 2006, did not engage in activities which required licensing, contrary to his responsibilities under sections 6(2) and 7(5) of the *Real Estate Services Act* and section 3-1 of the Council Rules.

RESULT: Royal Pacific Realty (Kingsway) Ltd. was reprimanded for professional misconduct as described above. Further, Royal Pacific Realty (Kingsway) Ltd. and Tak Kun Fung were jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,500.00.

RESULT: Tak Kun Fung was reprimanded for professional misconduct as described above. Further, Tak Kun Fung and Royal Pacific Realty (Kingsway) Ltd. were jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,500.00.

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

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