

Report from Council

E-signatures, electronic agreements and electronic tablets

With commerce becoming increasingly digitized, electronic agreements and contracts have grown in popularity. Some licensees have started to use electronic tablets when providing real estate services. The tablets contain, for example, the electronic version of service agreements and Contracts of Purchase and Sale of real estate. The signature of the buyer and seller may be captured by their signing on the tablet, much like when we sign on a tablet for receipt of delivery of a couriered package or at a credit card terminal. The agreements can be printed or emailed directly from the tablet.

The Council has considered the question of whether electronic contracts are enforceable when the signature of a party to the contract is not signed in ink, known as a “wet” signature.

The Council has concluded that electronic agreements and the use of signatures written onto an electronic tablet can create enforceable agreements, whether these are service agreements or Contracts of Purchase and Sale of real estate, so long as all of the essential elements of a contract are in place, e.g. the parties to the contract are known, the terms of the contract are clear and the parties have agreed to those terms.

The *Law and Equity Act* requires that a Contract of Purchase and Sale of real estate, in order to be enforceable, must

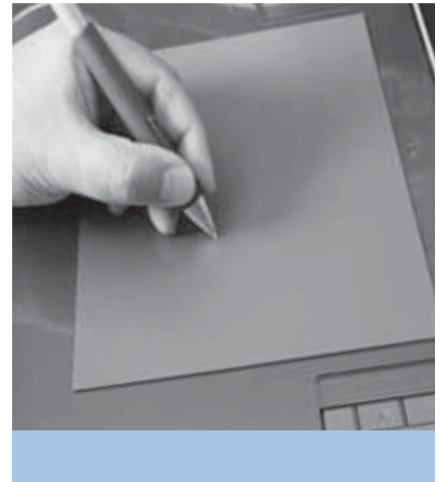
be in writing and signed by the party to be charged or an agent of the party. The courts have expressly supported the view that, while the traditional form of writing is a paper document, the definition does not preclude other forms of expression, including electronic communications.

The reason for the requirement of a signature to a contract is to ensure that there has been acknowledgement and approval of the terms of the contract. The signature need not be in any particular form and the courts have supported both manual “wet” and electronic signatures, and electronic signatures that are password protected, as well as those that are not.

Licensees are reminded that email communications, where the name of the sender may appear, **are not** sufficient as a replacement for a “wet” signature on a paper contract or an electronic signature captured on a tablet.

Other Issues: Storage and retention of electronic records

There are other issues which should be considered by licensees and their brokerages using electronic technology. The first concern is that many of the companies promoting electronic agreement software are based in the USA and both the production and the storage of the information is subject to different privacy



laws, such as the U.S. federal *Patriot Act* which may result in disclosure of confidential client information in circumstances which would not be required in Canada. As well, section 25 of the *Real Estate Services Act* requires that a brokerage must keep proper books, accounts and other records in British Columbia. Several Council Rules may also apply. For example, section 8-9.1 of the Council Rules permits electronic storage of records but requires the prompt transfer to a printed form of any record upon the request of the Council. Since section 8-10 of the Council Rules requires licensees to keep records for 7 years, the security and accessibility of the storage facility must also be considered when setting up a method of electronic storage within the brokerage. Brokerages may wish to obtain appropriate legal, accounting and IT advice when considering a paperless record keeping system.

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

This Issue:

- E-signatures, electronic agreements and electronic tablets
- Council Election Results
- Change in Council Criminal Record Check Procedure
- Unlicensed Assistants and Strata Management Services
- Management of Rental Property Owned by a Strata Corporation

- Strata Property Act—Amendments
- Notice of Licensee Resignations
- Order in Urgent Circumstances
- Disciplinary Decisions

A Note from the Chair



William R. Brown,
Chair

As I end my term as Chair of the Council, I would like to thank all those who have supported me over the past year. It has been a great experience which I will not soon forget.

I would like to wish a fond farewell to those members of the Council who are departing the Council table: John Finlayson from the County of Nanaimo after six years of service, Ann Petrone from the Combined Counties of Victoria, Nanaimo, Yale, Kootenay, Cariboo and Prince Rupert after five years of service, and Danny Leung from Richmond, one of our three public appointees who has served on the Council for a total of five years. Each of these fine individuals has made an outstanding contribution to the Council's mandate during their tenure.

On July 1st, the Council welcomes newly elected members Susan McGougan and Subhadra Ghose, both of Nanaimo and newly appointed public member Barbara Barry of West Vancouver. We also welcome back re-elected members Bill Binnie, Bill Phillips, Marshall Cowe and Gerry Martin.

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.
- 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 making British Columbia a leader in licensing education programs is very much appreciated by the Council;
- Vice-Chair Gerry Martin and the members of the Council, both past and present, that I have served with who have made my time on the Council such a pleasure;
- The volunteers who serve on the Council's Education, Rental Property Management, Strata Management and Commercial advisory groups.

Finally, I would like to thank Robert Fawcett, the Council's Executive Officer and his staff for the valuable assistance and dedication to the regulation of real estate services in British Columbia over the past year.

On behalf of the Council,

William R. Brown
Chair

Office Closures

The Council office will be closed on **Thursday, July 1, 2010** for Canada Day and **Monday, August 2, 2010** for BC Day.

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Real Estate Council of BC
CHAIR—William R. Brown
VICE-CHAIR—Gerry Martin
EXECUTIVE OFFICER—Robert O. Fawcett

COUNCIL MEMBERS

William (Bill) Binnie
Bryon Brandle
Marshall Cowe
John Finlayson
Abdul Ghouri
Danny Leung
Jim McNeal
John Nagy
Patrick O'Donnell
Ann Petrone
W. B. (Bill) Phillips
Bruce Turner
Liz Tutt
Michael Ziegler

STATISTICS

June 2010

Representatives: 17,003
Associate Brokers: 1,802
Managing Brokers: 1,323
Total Licensees: 20,128
Brokerages (including branch offices and sole proprietors): 1,412

Role of the Council

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

Report from Council

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

Canada Post

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

PM# 40016497

Printed on 100% post-consumer recycled paper

Council Election Results

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, 2010.

New Council Members

District #3 – County of Nanaimo (managing/associate broker member)

- Susan McGougan, Re/Max of Nanaimo, Nanaimo (licensed for 19 years)

Districts #2, 3, 6, 7 – Combined Counties of Victoria, Nanaimo, Yale, Kootenay, Cariboo and Prince Rupert (representative member)

- Subhadra Ghose, Re/Max of Nanaimo, Nanaimo (licensed for 19 years)

Re-elected Council Members

District #1 – County of Vancouver (managing/associate broker members)

- William (Bill) Binnie, Royal LePage Northshore, West Vancouver (licensed for 35 years)
- William (Bill) Phillips, Whistler Real Estate Company Limited, Whistler (licensed for 35 years)

District #4 – County of Westminister (North of the Fraser River) (managing/associate broker member)

- Marshall Cowe, Royal LePage Coronation West Realty, Coquitlam (licensed for 37 years)

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

- Gerry Martin, B.C. Farm & Ranch Realty Corp., Abbotsford (licensed for 31 years)

The following Council members have a further year to serve

All Districts (rental property/strata management member)

- William R. Brown, Brown Bros. Agencies Limited, Victoria (licensed for 33 years)

District #1 – County of Vancouver (managing/associate broker member)

- Patrick J. O'Donnell, Prudential Sussex Realty (WVan), West Vancouver (licensed for 26 years)



*Council member terms
commence July 1, 2010*

District #1 – County of Vancouver (representative member)

- Abdul R. Ghouri, Royal Pacific Realty (Kingsway) Ltd., Vancouver (licensed for 26 years)

District #2 – County of Victoria (managing/associate broker member)

- Michael Ziegler, Newport Realty Ltd., Victoria (licensed for 34 years)

District #4 & #5 – Counties of Westminister (N. & S. of the Fraser River) (representative member)

- Elizabeth (Liz) C. Tutt, Re/Max Nyda Realty Inc., Chilliwack (licensed for 25 years)

District #6 – County of Yale (managing/associate broker member)

- Bryon R. Brandle, Re/Max Armstrong, Armstrong and Re/Max – Vernon (Slvr-Str), Silver Star (licensed for 26 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 32 years)

Government Appointed Public Members

The Council's government appointed public members as of July 1, 2010 are: Barbara Barry, John Nagy and Bruce Turner.

Retiring from Council

- John Finlayson, Osborne Realty Services (1992) Ltd., Duncan, after six years of service
- Ann Petrone, Re/Max Kelowna, Kelowna, after five years of service
- Danny Leung, public member, Richmond, after five years of service. ■

Change in Council Criminal Record Check Procedure

Identification Now Required



The Council's criminal record search provider has advised that the RCMP-CPIC Services will require that licence applicants submit copies of two pieces of government issued identification in order to conduct a criminal record search.

As a result, managing brokers are advised that, after June 18, 2010, copies of two (2) pieces of identification must be submitted with all applications for First time licensing, Re-licensing, and Reinstatements (unlicensed for more than 90 days) (see list below for acceptable forms of ID). In addition, the managing broker who signs the application will also be required to confirm that the identification being provided is, in fact, that of the person applying for licensing.

Applications received without two pieces of acceptable ID will not be sent for a

criminal record check. The copy of the identification must be easily readable and the Real Estate Council must be able to clearly see the photo. Please take into consideration that ID containing photos will transmit much darker when faxing so please adjust photocopies accordingly to ensure a light, clear copy. **If the photo is not clear, applications cannot be forwarded for a criminal record check and will cause a delay in licensing.** Please note that due to the volume of applications received, the Real Estate Council cannot ensure that brokerages will be immediately contacted if the ID is unclear or unreadable. The following list contains acceptable forms of identification. Please note that the copies of the identification must be clear and easily readable.

Applicants must submit a copy of one of the following pieces of photo identification:

- Valid driver's licence
- Valid B.C. identification card
- Current passport
- Permanent residence card

PLUS applicants must submit a copy of one of the following pieces of identification:

- Birth certificate
- BC Care Card
- Social Insurance Card

Pre-Screening applications, Director, Officer or Partner Information forms and Sole Proprietor applications must also include copies of two (2) pieces of identification.

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

Unlicensed Assistants and Strata Management Services

Those who provide strata management services for a fee, unless they are exempt, must be licensed under the *Real Estate Services Act* (RESA). "Strata management services" is defined in section 1 of RESA as follows:

"strata management services" means any of the following services provided to or on behalf of a strata corporation:

- (a) collecting or holding strata fees, contributions, levies or other amounts levied by, or due to, the strata corporation under the Strata Property Act;*
- (b) exercising delegated powers and duties of a strata corporation or strata council, including*
 - (i) making payments to third parties on behalf of the strata corporation,*
 - (ii) negotiating or entering into contracts on behalf of the strata corporation, or*
 - (iii) supervising employees or contractors hired or engaged by the strata corporation*

but does not include an activity excluded by regulation;"

Strata management services are not restricted to those being performed within "regular business hours"; the definition also applies to services being provided "after hours", including on-call and/or emergency services. A brokerage cannot "contract out" or "source out" services for which a licence is required under RESA.

Collecting strata fees, contributions, or levies

Section 2.18 of the Real Estate Services Regulation provides the following exemption from the requirement to be licensed for strata caretakers employed by a strata corporation or brokerage:

"Exemption for strata caretakers employed by strata corporation or brokerage

- 2.18 (1) Subject to subsection (2), an individual who is employed as a caretaker or manager by a strata corporation, or by a brokerage that provides strata management services to or on behalf of a strata corporation, is exempt from the requirement to be licensed under Part 2 of the Act in respect of collecting strata fees, contributions, levies or other amounts levied by, or due to, the strata corporation under the Strata Property Act.*
- (2) On receipt of money referred to in subsection (1), the exempt caretaker or manager must promptly deliver the money to the strata corporation or brokerage, as applicable."*

The exemption requires the relationship between the brokerage and the unlicensed individual to be that of 'employer-employee'. Therefore, in order for an independent contractor to collect strata fees,

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contributions, levies or other amounts on behalf of the brokerage, the contractor must be licensed. If in doubt, brokerages may want to seek independent accounting or legal advice to ensure that their relationship with an unlicensed individual providing these services is structured as an employer-employee relationship according to the Canada Revenue Agency guidelines.

Other activities

The Real Estate Council has developed the following lists of additional activities which may and may not be performed by an unlicensed person employed or contracted by a brokerage licensed to provide strata management services. This includes strata caretakers acting under the section 2.18 exemption. The 'may' list is divided into three parts.

The first part sets out the duties an unlicensed person may perform, subject to the general direction and supervision of the brokerage or a related licensee, on an ongoing basis. The second part requires the brokerage or a related licensee to provide instructions to the unlicensed person on a specific situation or event before any action is taken. The third part provides that an unlicensed person may, in accordance with the brokerage's standard processes and procedures, prepare documents but that the documents produced must be approved by the brokerage or a related licensee before they are considered complete.

An unlicensed assistant **may**:

1. Under the general direction and supervision of the brokerage or a licensee engaged by that brokerage:
 - answer the telephone and take messages;
 - place advertising;
 - schedule appointments for a licensee (this does not include making telephone calls, telemarketing, or performing other activities to solicit business on behalf of the licensee);



- maintain strata and brokerage records;
- supervise the inspection of strata records;
- act as a courier to deliver strata forms and records, pick up keys, and other similar items;
- coordinate and distribute keys and other building security devices;
- assemble strata notices and agenda packages;
- assist a licensee at a strata council or general meeting provided that the unlicensed assistant does not advise the strata council or strata corporation;
- obtain public information from a courthouse, municipality, regional district, etc;
- perform bookkeeping or office functions, including:
 - record and deposit trust funds,
 - record third party charges and payments, and
 - record charges and payments of strata fees, liens and fines;
- contact trades to assess the need for repairs.

2. As authorized on a case by case basis by the brokerage or a licensee engaged by that brokerage:
 - arrange for approved repairs, services and purchases*;
 - obtain quotes;
 - arrange access to common property.
3. For the approval of the brokerage or a licensee engaged by that brokerage:

- prepare strata notices and agenda packages;
- prepare minutes of annual and special general meetings and strata council meetings;
- draft correspondence for signing by a licensee;
- prepare financial statements and reconciliations;
- prepare cheques for signature by a licensee or strata council member(s);
- prepare *Strata Property Act* forms.

An unlicensed assistant **may not**:

- exercise delegated powers of a strata corporation or strata council, including:
 - making payments to third parties on behalf of the strata corporation,
 - negotiating or entering into contracts on behalf of the strata corporation, and
 - supervising employees or contractors hired or engaged by the strata corporation;
- present, negotiate or explain any service agreement;
- negotiate or agree to any management fee on behalf of a licensee. ■

* Brokerages and their related licensees must ensure that an unlicensed assistant obtains direction from a licensee or the strata corporation client before a decision on expenditures is made which would bind the strata corporation client to costs or liabilities that are not covered under a maintenance contract. Making these decisions involves exercising the delegated powers of a strata corporation or strata council and, therefore, these decisions should only be made by a licensee or the strata corporation client.

Management of Rental Property Owned by a Strata Corporation

A strata corporation may own common property, or one or more strata lots which the corporation allows people to use, for a fee, in a variety of ways. These strata lots are typically used in one of the following ways:

1. Short term vacation rentals—strata lots are available to the general public for vacation rental;
2. Guest suites—the strata lot is available for the use of family and/or friends of strata lot owners for short term stays while they visit people who reside in the complex;
3. Rental real estate—the strata lot is rented in the open market by way of a tenancy agreement; and
4. Resident manager suites—the strata lot is rented to an employee of the strata corporation. The value of the rent is often deducted from the employee's pay.

Whether, and if so how, the *Real Estate Services Act* (RESA) applies to the management of these rentals is dependent on the nature of the use.

1. Short term vacation rentals

The short term rental of accommodation (often called vacation accommodation or vacation rentals) is covered under the *Business Practices & Consumer Protection Act* administered by Consumer Protection BC. Businesses, including people who are licensed under RESA, may be required to be licensed as either a travel agent or travel wholesaler through Consumer Protection BC if they rent accommodation or short term vacation properties they do not own. More information with respect to these requirements may be found in the June 2009 *Report from Council*, which is posted on the Real Estate Council's website at www.recbc.ca/pdf/RFC/2009/RFCJune2009.pdf or at Consumer Protection BC's website at www.consumerprotectionbc.ca.



2. Guest suites

The management of the use of a guest suite, as described above, does not require rental licensing under RESA or a licence under the *Business Practices & Consumer Protection Act*. A brokerage providing strata management services to a strata corporation may assist in managing the use of a guest suite as a part of the services it provides.

3. Rental real estate

A strata lot that is used for market rental is considered rental real estate under RESA, and the strata corporation is the landlord in relation to its rental. A strata corporation landlord may:

- a) manage its own rental unit,
- b) have an unlicensed employee of the strata corporation, acting either under

the 'Exemption for employees of principals' in section 2.1 of the *Real Estate Services Regulation* (the 'Regulation') or under the 'Exemption for caretakers providing services to different owners' in section 2.13 of the Regulation, manage the unit, or

- c) contract with a brokerage licensed to provide rental property management services to manage the unit on behalf of the strata corporation.

The definition of "rental property management services" under section 1 of RESA includes showing rental real estate to prospective tenants, negotiating the terms of the tenancy, and collecting rent. Therefore, a brokerage engaged to provide strata management services by a strata corporation client that wishes to rent a

A brokerage that is providing strata management and rental property management services to the same strata corporation must ensure that the requirements of the Real Estate Council Rules have been satisfied.



strata lot as rental real estate requires a licence to provide rental property management services in order to assist the client in this way. A brokerage licensed to provide strata management services and/or trading services only is not licensed to assist with these rental property management activities.

Any individual who provides rental property management services to a strata corporation client on behalf of a brokerage must also either be licensed to provide rental property management services or be an unlicensed employee of a brokerage that is licensed to provide rental property management services, where the employee is acting under the 'Exemption for caretakers employed by brokerages' in section 2.14 of the Regulation. Section 2 of RESA does not allow a licensee to also act under one of the exemptions; therefore, a person licensed to provide strata management services and/or trading services only may not also act under this exemption.

A brokerage providing **only** strata management services to a strata corporation

client should not be directly involved in collecting rents, security deposits or pet damage deposits for the use of that client's rental real estate.

A brokerage that is providing strata management and rental property management services to the same strata corporation must ensure that the requirements of section 5-1 of the Real Estate Council Rules with respect to a written strata management service agreement, **as well as** a written rental property management service agreement, have been satisfied. Section 5-1 may be satisfied through one service agreement which addresses both the strata management services and the rental management services, or it may be satisfied by way of two separate service agreements—one for the strata management services and one for the rental property management services.

4. Resident manager suites

Where a strata lot owned by a strata corporation is rented to an employee of the strata corporation, the Real Estate Council would **not** require a brokerage that provides strata management services to

the strata corporation to also be licensed to provide rental property management services with respect to the management of this strata lot so long as the brokerage does not:

- a) negotiate or enter into a contract with the employee (tenant) on behalf of the strata corporation (landlord) with respect to the use of the strata lot (e.g. tenancy agreement);
- b) collect rent or security/pet damage deposits for the use of the strata lot (i.e. either the rent and/or security/pet damage deposit are collected by the strata corporation or the value of the rent is deducted from the employee's pay); and
- c) manage landlord and tenant matters between the strata corporation (landlord) and the employee (tenant).

Enquiries regarding this information may be directed to the Real Estate Council at 604-683-9664, toll free at 1-877-683-9664 or by email to info@recbc.ca. ■

* A strata corporation may want to use rent it has collected for the use of a strata lot it owns to offset common expenses. To this end, a strata corporation may forward some or all of this rent to its strata management brokerage with instructions to use the money to offset common expenses. Based on the instructions of the strata corporation client, typically included in the written service agreement, the funds should be deposited into the appropriate trust account maintained in the name of the strata corporation.

Strata Property Act— Amendments

In October 2009, Bill 8 – *The Strata Property Amendment Act*, 2009, S.B.C. 2009 was approved by the British Columbia Legislature which resulted in a number of changes to the *Strata Property Act* and the *Strata Property Regulation*, B.C. Reg. 43/2000.

Numerous sections of Bill 8 came into force as of December 10, 2009 as a result of Order in Council No. 707, which included amendments to the *Strata Property Regulation* that took effect January 1, 2010. The remaining sections of Bill 8 are not yet in force as a result of the need for government to consult with the strata community and pass extensive regulations.

Although some of the amendments are administrative in nature, many of the amendments to the *Strata Property Act* impact licensees providing trading services and those providing strata management services. Following is an analysis of the amendments and their impact on licensees.

This article is intended to provide general information regarding Bill 8, and is not intended as a legal opinion. Licensees with questions regarding these amendments and/or the specific circumstance(s) to which these amendments may apply should not act upon this information without having first obtained legal advice.

Restricting Strata Council Discretion

Section 27, which prevents the owners within a strata corporation from directing or restricting the strata council in the exercise of its discretion relating to the determination of bylaw breaches, has been expanded to prevent the owners from interfering with the strata council's discretion to determine whether a person should pay the reasonable costs of remedying a contravention of a bylaw or whether an owner should be exempted from a bylaw that prohibits or limits rentals. Previously, the owners were prevented from interfering with a strata

council's discretion relating to determining whether a person contravened a bylaw, whether a person should be fined, or whether a person should be denied access to a recreation facility. The amendment prevents the interference by owners in the discretion of strata council with respect to all matters related to bylaw enforcement.

Conflict of Interest

Section 32 of the *Strata Property Act* has been amended to expand the extent of disclosure of strata council members' conflicts of interest to include all matters that are the subject of consideration by the strata council in which a member has an interest which could result in a conflict with their duties as strata council members.

Request for a Hearing

Section 34.1, which is a new section added to the *Strata Property Act*, requires a strata council to hold a council meeting to hear an owner within four weeks of receiving a request for a hearing. Section 34.1 also requires that, if a decision is required, the strata council must give the owner a written decision within one week of the hearing. This provision was previously contained in the Standard Bylaws. By making the provision part of the *Strata Property Act*, strata corporations are unable to alter or amend this provision. Strata managers should ensure that the necessary processes are in place to immediately forward requests for a hearing to the strata council in order that the hearing can be arranged within the time required.

Strata Corporation Records

Section 36 expands who may obtain records from the strata corporation by permitting former owners and former tenants who had been assigned a landlord's right to inspect and obtain documents to view and obtain copies of the documents that relate to the period during which the former owner or former tenant was an owner or tenant.

Meetings and Agenda Resolutions

The number of people required to demand the calling of a Special General Meeting (SGM) (section 43) or demand that an item be placed on the agenda of a meeting (section 46) has been reduced from 25% to 20%.

Tie Votes

Section 53 of the *Strata Property Act* has been amended to provide that, if there is a tie vote at an Annual General Meeting (AGM) or SGM, the president or vice-president (if the president is absent or unable or unwilling to vote) may break the tie by casting a second deciding vote.

Notice to Owners

Section 61, which provides the manner in which the strata corporation may provide notice to an owner, has been amended to permit the Strata Council to provide notice by email **only** in cases where the owner has not provided the strata corporation with an address outside the strata plan for the purpose of receiving notices and other records or documents. Section 61 differentiates between owners who have provided the strata corporation with an address outside the strata plan for these purposes and owners who have not.

If an owner has provided the strata corporation with an address outside the strata plan for the purposes of receiving notice, the provisions with respect to notice have not been amended. Where an outside address has been provided, the only options for the Strata Council to give notice continue to be either leaving it with the person or mailing it to the address provided. If an owner has provided an outside address for these purposes, an email address cannot be used for notice.

If the person has not provided an outside address, the options for providing notice have been expanded to permit notice by email if an owner has provided an email address for the purpose of receiving notice.



Strata managers may wish to recommend to the Strata Council that the Strata Council, subject to the foregoing restrictions, invite owners to submit email addresses for the purpose of receiving notices in order to simplify the sending of notices for the next general meeting.

Notice to Strata Corporation

Section 63 of the *Strata Property Act* has been amended to allow notices or other records or documents to be emailed to the strata corporation's email address or an email address provided by a strata council member.

Strata managers should ensure that, if a strata council's email address has been made available to the owners, the email address is regularly monitored to ensure that any requests for hearings are identified in a timely manner.

Special Levies

Section 108 relating to the collection of special levies now requires a strata corporation to account for the money separately from other money of the strata corporation and limits the types of investments that can be made using special levy funds.

As a result of the amendments, strata corporations are now permitted to charge interest on overdue special levies to the maximum provided by the Strata Prop-

erty Regulation, which is currently 10% per annum compounded annually.

The amendments to section 108 also clarify that, if the strata corporation is returning excess special levy payments, the payment must be paid to each owner. The *Strata Property Act* previously provided that the strata corporation must "return the money to the owners". The drafters of the amendments have indicated that this change is to clarify that any excess special levy payments must be paid to the current owner. The amendment to section 108 also clarifies that money collected for a special levy includes interest earned on the money.

Amending Bylaws

Section 127 of the *Strata Property Act* has been amended to prevent a strata corporation comprised of residential strata lots or a mix of residential and non-residential strata lots from amending bylaws prior to the second AGM unless the bylaw amendment is approved by a unanimous vote. If a strata corporation is comprised of non-residential strata lots or a non-residential section has been formed, the owners can amend their bylaws at any time by following the procedures in the *Strata Property Act* to amend bylaws.

Filing Bylaw Amendments

Section 128 of the *Strata Property Act* has been amended to clarify that bylaws are

not enforceable until they are filed in the Land Title Office. Previously, the *Strata Property Act* provided that bylaw amendments must be filed within 60 days but did not provide for the consequences if they were not filed within that time. As a result of the amendment, bylaw amendments can be filed any time after they have been approved, however, they are not enforceable until they have been filed.

Age Restrictions

Section 123 has been amended to specifically permit the strata corporation to pass an age restriction bylaw. Section 41(2) of the *Human Rights Code* provides:

Nothing in this Code prohibits a distinction on the basis of age if that distinction is permitted or required by any Act or regulation.

The amendment now appears to permit age restriction bylaws to be enforceable.

Counting Rented Strata Lots

Section 142 has been amended to provide that rentals to family members and rentals permitted on the basis of hardship are not counted when determining whether the number of permitted rentals as set out in a rental bylaw has been reached.

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Exemption from Rental Bylaws

The exemption from a rental bylaw that occurs for all strata lots identified on a Rental Disclosure Statement (RDS) has been significantly extended for those developments where the RDS is filed **after** December 31, 2009.

If the RDS was filed prior to December 31, 2009, a rental bylaw does not apply to the strata lots identified on the RDS during the period that the RDS is valid until the strata lot is sold by the first owner. The only amendment to this provision is to provide that the exemption applies to the first owner (other than the owner developer) rather than the first purchaser, thereby clarifying that a person who obtained title as a consequence of an assignment has the benefit of the RDS.

For developments where the RDS is filed after December 31, 2009, the RDS will apply to exempt **all** strata lots named in the RDS from the application of a rental bylaw until the RDS expires. In other words, during the period the RDS is valid, a strata corporation will be unable to impose a rental bylaw.

Licensees providing strata management services should advise the strata corporations that have an RDS filed after December 2009 that a bylaw restricting rentals is not enforceable.

Where an RDS is filed after December 31, 2009, licensees providing trading services must closely examine the RDS

when purchasers are purchasing from the developer **and** when purchasers are purchasing re-sale strata lots. When dealing with an RDS filed prior to December 31, 2009, licensees providing trading services are not required to consider the RDS in any circumstances other than in transactions involving the developer. However, where the RDS is filed after December 31, 2009, its provisions will be significant to all purchasers and not just those who purchased from the developer. Licensees providing trading services should advise purchasers of their right to rent until the expiry of the RDS and also that during the period that the RDS is valid, the strata corporation will not be able to enforce a rental bylaw.

Hardship Applications

Subsection (3) of section 144 of the *Strata Property Act* has been amended by extending the period for holding a hearing relating to an application for an exemption from a rental bylaw on the basis of hardship from 3 to 4 weeks from the date the application is given to the strata corporation. This amendment also clarifies that an exemption is allowed if the strata corporation does not hold a hearing within the required 4 weeks if a hearing had been requested. As with general requests for a hearing, strata managers should ensure that the necessary processes are in place within their office to process all such requests and arrange for the hearing within the 4 weeks required by the *Strata Property Act*, as the failure to do so will result in the hardship application being permitted.

Appointment of Administrator

Section 174 of the *Strata Property Act* was amended by the addition of subsection (7) which specifies that unless the court otherwise orders, if a strata corporation must exercise a power and perform a duty by a resolution passed by majority vote, a $\frac{3}{4}$ vote or unanimous vote, a court-appointed administrator must not exercise that power or perform that duty unless approval of such resolution has been obtained.

Restrictions on Arbitration

Sections 177 and 178 have been amended to clarify that disputes may not be referred to arbitration once a court proceeding has commenced.

Conversion to Freehold Strata Plan

Section 216 of the *Strata Property Act* was amended to provide that, on conversion of leasehold strata plan to freehold, any occupancy restrictions filed under section 206 of the *Strata Property Act* will no longer apply.

The *Strata Property Act* and *Strata Property Regulation* may be viewed online at www.bclaws.ca and are up-to-date and include the amendments that are already in force. Bill 8 – The *Strata Property Amendment Act*, 2009, S.B.C. 2009 may also be viewed at the following link: www.leg.bc.ca/39th1st/3rd_read/gov08-3.htm

Following is the link to a copy of Order in Council No. 707, approved and ordered on December 10, 2009: www.fic.gov.bc.ca/pdf/responsibilities_strata/312-2009.pdf. ■

Notice of Licensee Resignations

Jaime Marie Paialunga

Jaime Marie Paialunga, while licensed as a representative with Valley Realty Ltd. dba Keller Williams Valley Realty, Abbotsford, requested the Real Estate Council of British Columbia to discontinue disciplinary proceedings against her as she has decided to permanently retire from real estate practice. Ms. Paialunga was facing a disciplinary hearing into her professional conduct and would have been required to appear before a hearing panel of the Real Estate Council to respond to these allegations.

Considering the fact that there is likely no greater disciplinary penalty than not

being licensed to act again, the Real Estate Council agreed with Ms. Paialunga's request. Ms. Paialunga's licence was surrendered on February 19, 2009 and the lifetime ban on Ms. Paialunga's licensing under the *Real Estate Services Act* is effective as of March 15, 2010.

William John Robinson

William John Robinson, while licensed as a representative with Locations West Realty Inc. dba Royal LePage—Locations West Realty, Penticton, requested the Real Estate Council of British Columbia to discontinue disciplinary proceedings against him as he has decided to perma-

nently retire from real estate practice. Mr. Robinson was facing a disciplinary hearing into his professional conduct and would have been required to appear before a hearing panel of the Real Estate Council to respond to these allegations.

Considering the fact that there is likely no greater disciplinary penalty than not being licensed to act again, the Real Estate Council agreed with Mr. Robinson's request. Mr. Robinson surrendered his licence on October 30, 2009 and the lifetime ban on Mr. Robinson's licensing under the *Real Estate Services Act* is effective as of March 15, 2010. ■

Council Suspension Order

On May 3, 2010, pursuant to section 45 of the Real Estate Services Act, the Real Estate Council of British Columbia suspended the real estate licence of **Bobby Baldeep Nagra**, formerly licensed with Century 21 Coastal Realty Ltd., Surrey.

The Real Estate Council suspended this licence in the public interest as a result of the failure of Bobby Baldeep Nagra to account for trust monies he was holding on behalf of brokerage clients. This suspension remains in

effect until further notice.

Inquires from concerned clients of Bobby Baldeep Nagra should be directed to the Real Estate Council at 604-683-9664. ■

Disciplinary Decisions

Since the April 2010 *Report from Council* newsletter, the following actions have been taken as a result of disciplinary hearings and Consent Orders conducted by the Council.

Trading Services

Munjinder Singh Gill

ISSUE: Munjinder Singh Gill, currently unlicensed, entered into a Consent Order with the Council in which he consented to an Order that, while licensed as a representative with Fraseridge Realty Ltd. dba Amex-Fraseridge Realty, Vancouver, he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening section 35(2) of the *Real Estate Services Act* by engaging in conduct unbecoming a licensee by providing information and documents to the Royal Bank of Canada Financial Group in support of two mortgage applications in the name of his wife, which he knew were false and misleading.

RESULT: Munjinder Singh Gill is ineligible to renew his real estate licence for eighteen (18) months from April 7, 2010 to October 6, 2011 (inclusive). As a condition of licence renewal, Mr. Gill must pay enforcement expenses to the Council in the amount of \$1,000.00. Further, he is ordered to successfully complete the Trading Services Remedial Education Course within sixty (60) days of becoming relicensed.

Alexander Hart

ISSUE: Alexander Hart, currently unlicensed, entered into a Consent Order

with the Council in which he consented to an Order that, while licensed as a representative with Sunrich Realty Ltd. dba Amex Sunrich Realty, Richmond, he: (a) committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by: (i) contravening section 27(1) of the *Real Estate Services Act*; and (ii) listed and marketed a property without the consent of the owner of the property, contrary to section 4-8 of the Council Rules; (b) committed professional misconduct within the meaning of section 35(1)(d) of the *Real Estate Services Act* by: (i) entering into a tenancy agreement on behalf of a client that contained a term contrary to the provisions of the Residential Tenancy Act; and (ii) breaching said tenancy agreement; and (c) committed conduct unbecoming a licensee within the meaning of section 35(2) of the *Real Estate Services Act* by: (i) failing to settle the terms of an order of the Supreme Court of British Columbia on a reasonable basis; and (ii) failing to comply with orders of the Supreme Court of British Columbia

RESULT: Alexander Hart was suspended for sixty (60) days from May 19, 2010 to July 17, 2010 (inclusive) and was ordered to successfully complete the Trading Services Remedial Education Course, and pay enforcement expenses to the Council in the amount of \$1,000.00.

Zhou (Frank) Zhu

ISSUE: Zhou (Frank) Zhu and Frank Zhu Personal Real Estate Corporation, Multiple Realty Ltd. (Rhmd), Richmond, entered into a Consent Order with the Council in which he consented to an Order that, while licensed as

Zhou (Frank) Zhu, representative, Multiple Realty Ltd. (Rhmd), Richmond, he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*: 1) File 08-328 (a) in that he: (i) contravened section 7(3)(a) of the *Real Estate Services Act* by providing real estate services separate from his brokerage; (ii) contravened section 7(3)(b) of the *Real Estate Services Act* by accepting remuneration related to real estate services from someone other than his brokerage; (iii) contravened section 5-11 of the Council Rules by failing to disclose to his client, the buyer, that he was receiving remuneration from the seller, and the amount of the remuneration; (iv) contravened section 5-10 of the Council Rules by failing to clarify the nature of his representation with the buyer when he drafted the Contract of Purchase and Sale dated May 8, 2008 and did not identify his brokerage or any agency representation in the said contract; (v) contravened section 5-9 of the Council Rules in that he failed to provide the seller with a disclosure of interest in trade prior to presenting an offer to purchase the said property; and (vi) contravened section 27(1)(b) of the *Real Estate Services Act* by failing to deliver remuneration received for real estate services to his brokerage; and 2) File 08-498 (b) he contravened section 35(1)(c) of the *Real Estate Services Act* [deceptive dealing]: (i) by changing the amount of commission to be paid by the seller on the said listing contract from 1.1625% on the balance over and above the first \$100,000 to 2.5% on the said balance without the initials of the said seller to this change before delivering the said contracts to the brokerage; and (ii) by omitting to inform his brokerage that he held 2% of the shares of the said seller.

Disciplinary Decisions, *cont'd*

RESULT: Zhou (Frank) Zhu was suspended for forty-five (45) days from June 23, 2010 to August 6, 2010 (inclusive) and was ordered to pay a discipline penalty to the Council in the amount of \$1,000.00, and to successfully complete the Trading Services Remedial Education Course, and pay enforcement expenses to the Council in the amount of \$1,000.00.

Yong (Peter) Fu

ISSUE: Yong (Peter) Fu, representative, Sunrich Realty Ltd. dba Amex Sunrich Realty, Richmond, entered into a Consent Order with the Council in which he consented to an Order that, while he was licensed with Pacific Place – Arc Realty Ltd., Vancouver, he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he: (a) contravened section 7(3)(a) of the *Real Estate Services Act* by providing real estate services to the seller of the property other than on behalf of the brokerage; (b) contravened section 7(3)(b) of the *Real Estate Services Act* by accepting remuneration for real estate services regarding the property directly from the seller or from someone other than the brokerage with whom he was then licensed; (c) contravened section 27(1)(b) of the *Real Estate Services Act* by failing to deliver to the brokerage with whom he was then licensed, the remuneration he received from the seller for the real estate services he provided regarding the property; and (d) contravened section 3-2(1)(b) of the Council Rules by failing to provide his managing broker with trading records regarding the sale of the property.

RESULT: Yong (Peter) Fu was suspended for thirty (30) days from June 9, 2010 to July 8, 2010 (inclusive) and was ordered to successfully complete the Trading Services Remedial Education Course, and pay enforcement expenses to the Council in the amount of \$1,000.00.

Norman Hin Sing Ho

ISSUE: Norman Hin Sing Ho, associate broker, Broadway West Realty Ltd. dba Amex Broadway West Realty, Vancou-

ver, entered into a Consent Order with the Council in which he consented to an Order that, while licensed with West Coast Realty Ltd. (WBlvd) dba Sutton Group–West Coast Realty (WBlvd), Vancouver, he committed professional misconduct within the meaning of section 35(1)(a) and (d) of the *Real Estate Services Act* in that he, as the limited dual agent in the listing and the sale of a strata property on Pacific Street, Vancouver, (“Property”) from SC and VC (“Sellers”) to KL (“Buyer”) by way of a March 4, 2006 contract (“Contract”), which was assigned by the buyer to JC (“Assignee”) before closing by way of a March 15, 2006 assignment agreement (“Agreement”): (a) failed to clarify the nature of the services he would provide to the Buyer in accordance with his duties under sections 3-3(1)(e), 3-3(1)(f) and 5-10 of the Council Rules, particularly in light of the fact that he never met the Buyer; (b) witnessed the signature of the Buyer on the Contract when he did not see him sign, contrary to sections 3-3(1)(a) and 3-4 of the Council Rules and section 35(1)(d) of the *Real Estate Services Act*; (c) failed to ensure he received instructions directly from his client Buyer from the commencement of the relationship to its end and failed to ensure there was an adequate level of supervision of an unlicensed individual who was performing services on his behalf, contrary to section 3-2(4) of the Council Rules; (d) failed to disclose material information respecting the real estate services to the Sellers, namely a referral fee that he agreed to pay to the unlicensed individual, contrary to section 3-3(1)(f) of the Council Rules; and (e) failed to act with reasonable care and skill when he drafted an addendum signed by the Assignee and the Buyer wherein the Buyer acknowledged receipt of the \$20,000 deposit from the Assignee, contrary to section 35(1)(d) of the *Real Estate Services Act*.

RESULT: Norman Hin Sing Ho was suspended for thirty (30) days from May 19, 2010 to June 17, 2010 (inclusive) and will be under the direct supervision of a managing broker for a period of one year following the end of the suspension period, during which time the managing broker will provide quarterly reports to the Council and the report will include any-

thing of an adverse nature with respect to Mr. Ho’s activities. Mr. Ho was ordered to not apply for licensing as a managing broker for a period of two years from the end of the suspension period and that any application will be subject to the findings of a Qualification Hearing Committee. Further, Mr. Ho was ordered to 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, to enrol in and attend the first available CPE course “What Brokerages and REALTORS® Need to Know About Agency”, to successfully complete the Trading Services Remedial Education Course, and pay enforcement expenses to the Council in the amount of \$1,000.00.

Mehrzad (Mary) Fariborz Saleh

ISSUE: Mehrzad (Mary) Fariborz Saleh, representative, West Coast Realty Ltd. (Coq) dba Sutton Group–West Coast Realty (Coq), Coquitlam, entered into a Consent Order with the Council in which she consented to an Order that, while licensed with All Points Realty Group Ltd. dba Re/Max All Points Realty, Coquitlam, she committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that she, while acting for R.S. (the “Assignee”) in the assignment/purchase of property located in Coquitlam, British Columbia from SM and SHM as assignors (the “Assignors”) she: (a) contravened section 27(4) of the *Real Estate Services Act* by failing to ensure that the Assignor and the Assignee entered into a written agreement detailing that the Assignee would provide the deposit and assignment fees directly to the Assignor, rather than the fees being held in trust pending completion of the contract; (b) contravened section 3-2(1)(b) of the Council Rules by failing to promptly provide her managing broker with all trade records related to the assignment, as required by sections 8-4 and 8-5 of the Council Rules; (c) contravened section 3-2(2)(a) of the Council Rules by failing to keep her managing broker informed of the real estate services she was providing, specifically by failing to keep her managing

Disciplinary Decisions, *cont'd*

broker informed of the real estate services being provided in connection with the assignment/purchase of property located in Coquitlam, British Columbia; and (d) contravened section 7(3)(b) of the *Real Estate Services Act* by accepting remuneration in relation to property located in Coquitlam, British Columbia directly from the Assignor's realtor, which was not provided to her brokerage.

RESULT: Mehrzad (Mary) Fariborz Saleh was suspended for twenty-one (21) days from May 19, 2010 to June 8, 2010 (inclusive) and was ordered to successfully complete the Trading Services Remedial Education Course, and pay enforcement expenses to the Council in the amount of \$1,000.00.

Harry Jesse

ISSUE: Harry Jesse, representative, Home-life Glenayre Realty Company Ltd., Abbotsford, entered into a Consent Order with the Council in which he consented to an Order that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he: (a) contravened sections 3-3(h) and 3-4 of the Council Rules when he failed to ascertain or clarify the exact nature of the interest of the said buyer, if any, in the trade properties or the buyer's authority to trade the said properties, when he ascertained that the buyer was not the registered owner of the said trade properties; (ii) contravened sections 3-3(1)(a) and 3-4 of the Council Rules when he failed to protect the interests of the said seller by not making the said Contract of Purchase and Sale subject to the seller entering into an unconditional Contract of Purchase and Sale with the buyer for the purchase of the trade properties by a certain date; and (iii) contravened section 3-4 of the Council Rules when he failed to ensure that the terms and conditions of the said Contract of Purchase and Sale dated June 21, 2006 and addenda thereto were sufficiently clear to protect the interests of the seller.

RESULT: Harry Jesse was suspended for fourteen (14) days from June 23, 2010 to July 6, 2010 (inclusive) and was ordered

to successfully complete Trading Services Remedial Education Course, and pay enforcement expenses to the Council in the amount of \$750.00.

Gerald Joseph Dombowsky

ISSUE: Gerald Joseph Dombowsky, representative, Premier Canadian Properties (Okanagan) Ltd. dba Premier Canadian Properties, Kelowna, entered into a Consent Order with the Council in which he consented to an Order that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he: (a) contravened section 3-4 of the Council Rules in that when he drafted an offer to purchase the said Northland property dated June 21, 2006 on behalf of a client, and addenda thereto, indicating a term of which was that his client was trading two properties on Noble Street and Anderson Avenue, Chilliwack, he failed to confirm whether his client had any legal authority to trade these properties.

RESULT: Gerald Joseph Dombowsky was suspended for fourteen (14) days from June 23, 2010 to July 6, 2010 (inclusive) and was ordered to successfully complete the Trading Services Remedial Education Course, and pay enforcement expenses to the Council in the amount of \$750.00.

Re/Max Michelle Yu Michelle Man-Wa Ng (Yu) Lien Hoang (Leanne Wong), Hunter Wei-Shun Wang Teresa Kin-Ming Chu Karson Hunt Tse Hok Man (Titus) Ho

ISSUE: MSQ Business Services Ltd. dba Re/Max Michelle Yu, Vancouver, currently unlicensed, entered into a Consent Order with the Council in which it consented to an Order that it committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that: (a) contrary to section 7(5)(a) of the *Real Estate Services Act*, it provided real estate services by representatives not licensed to Re/Max Michelle Yu, in that the website named Ms. Wong, Mr. Wang, Ms. Chu, Mr. Tse

and Mr. Ho as members of the "Michelle Yu Team" of Re/Max Michelle Yu, when in fact Ms. Wong, Mr. Wang, Ms. Chu, Mr. Tse and Mr. Ho were licensed with Bowmac Realty Inc. and (b) contrary to section 7(5)(b) of the *Real Estate Services Act*, it engaged or allowed licensees licensed in relation to another brokerage to provide real estate services on behalf of Re/Max Michelle Yu by entering into, on its own or together with Ms Yu, remuneration letters.

ISSUE: Michelle Man-Wa Ng (Yu) and Michelle Yu Personal Real Estate Corporation, Andrews Realty Ltd. dba Re/Max Real Estate Services, Vancouver, entered into a Consent Order with the Council in which she consented to an Order that, while licensed as Michelle Man-Wa Ng (Yu), representative, MSQ Business Services Ltd. dba Re/Max Michelle Yu, Vancouver, she committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that: (a) contrary to section 37(4) of the *Real Estate Services Act*, she withheld information in response to Council inquiries, in that in the December 23, 2008 and January 19, 2009 letters to the Council, she failed to disclose the existence of remuneration letters; (b) contrary to section 3-4 of the Council Rules, she failed to ensure that the provision of real estate services by one or more than one of the members of the "Michelle Yu Team" was in accordance with the *Real Estate Services Act*; and (c) contrary to section 4-6(5) of the Council Rules, she advertised the team name "Michelle Yu Team", which team name had not been approved by Council.

ISSUE: Lien Hoang (Leanne Wong), representative, Bowmac Realty Inc., Richmond, entered into a Consent Order with the Council in which she consented to an Order that she committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that, contrary to section 7(3)(a) of the *Real Estate Services Act*, she provided real estate services other than on behalf of the brokerage in relation to which she was licensed, in that she advertised real estate services in relation to the "Michelle Yu Team" of Re/Max Michelle Yu while licensed with Bowmac Realty Inc.

Disciplinary Decisions, *cont'd*

ISSUE: Hunter Wei-Shun Wang, representative, Bowmac Realty Inc., Richmond, entered into a Consent Order with the Council in which he consented to an Order that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that, contrary to section 7(3)(a) of the *Real Estate Services Act*, he provided real estate services other than on behalf of the brokerage in relation to which he was licensed, in that he advertised real estate services in relation to the “Michelle Yu Team” of Re/Max Michelle Yu while licensed with Bowmac Realty Inc.

ISSUE: Teresa Kin-Ming Chu, representative, Andrews Realty Ltd. dba Re/Max Real Estate Services, Vancouver, entered into a Consent Order with the Council in which she consented to an Order that, while licensed as a representative with Bowmac Realty Inc., Vancouver, she committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that, contrary to section 7(3)(a) of the *Real Estate Services Act*, she provided real estate services other than on behalf of the brokerage in relation to which she was licensed, in that she advertised real estate services in relation to the “Michelle Yu Team” of Re/Max Michelle Yu while licensed with Bowmac Realty Inc.

ISSUE: Karson Hunt Tse, representative, Bowmac Realty Inc., Richmond, entered into a Consent Order with the Council in which he consented to an Order that, he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that, contrary to section 7(3)(a) of the *Real Estate Services Act*, he provided real estate services other than on behalf of the brokerage in relation to which he was licensed, in that he advertised real estate services in relation to the “Michelle Yu Team” of Re/Max Michelle Yu while licensed with Bowmac Realty Inc.

ISSUE: Hok Man (Titus) Ho, representative, Andrews Realty Ltd. dba Re/Max Real Estate Services, Vancouver, entered into a Consent Order with the Council in

which he consented to an Order that, while licensed as a representative with Bowmac Realty Inc., Vancouver, he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that, contrary to section 7(3)(a) of the *Real Estate Services Act*, he provided real estate services other than on behalf of the brokerage in relation to which he was licensed, in that he advertised real estate services in relation to the “Michelle Yu Team” of Re/Max Michelle Yu while licensed with Bowmac Realty Inc.

RESULT: MSQ Business Services Ltd. dba Re/Max Michelle Yu was reprimanded.

RESULT: Michelle Man-Wa Ng (Yu) was suspended for seven (7) days from June 9, 2010 to June 15, 2010 (inclusive) and was ordered to successfully complete the Trading Services Remedial Education Course.

RESULT: MSQ Business Services Ltd. dba Re/Max Michelle Yu and Michelle Man-Wa Ng (Yu) are ordered to be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,000.00.

RESULT: Lien Hoang (Leanne Wong) was reprimanded and was ordered to successfully complete the Trading Services Remedial Education Course.

RESULT: Hunter Wei-Shun Wang was reprimanded and was ordered to successfully complete the Trading Services Remedial Education Course.

RESULT: Teresa Kin-Ming Chu was reprimanded and was ordered to successfully complete the Trading Services Remedial Education Course.

RESULT: Karson Hunt Tse was reprimanded and was ordered to successfully complete the Trading Services Remedial Education Course.

RESULT: Hok Man (Titus) Ho was reprimanded and was ordered to successfully complete the Trading Services Remedial Education Course.

RESULT: Lien Hoang (Leanne Wong), Hunter Wei-Shun Wang, Teresa Kin-Ming Chu, Karson Hunt Tse and Hok

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

John William Gee

ISSUE: John William Gee, representative, Colliers Macaulay Nicolls Inc. dba Colliers International, Vancouver, entered into a Consent Order with the Council in which he consented to an Order that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he: (a) confirmed he had completed the course requirements of the Council’s Re-licensing Education Program when he had not completed the course requirements, contrary to section 35(1)(g) of the *Real Estate Services Act*; and (b) failed to complete the course requirements of the Council’s Re-licensing Education Program prior to making application for his licence renewal, contrary to section 2-8.1 of the Council Rules.

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

Jason Michael Zupp-Zecchel

ISSUE: Jason Michael Zupp-Zecchel, representative, Downtown Realty Ltd. dba Royal LePage Downtown Realty, Vernon, entered into a Consent Order with the Council in which he consented to an Order that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that: (a) contrary to section 3-3(1)(d) of the Council Rules, he failed to advise the Seller to obtain independent legal advice concerning the termination of the Contract and the Seller entering into the New Contract; and (b) contrary to section 3-4 of the Council Rules, he failed to make reasonable efforts later in the day on May 1, 2009 or on May 2, 2009 to ensure that the Buyer’s agent and the Buyer knew that the Seller was not going to remove the Seller’s Subject Clause when Mr. Zupp-

Disciplinary Decisions, *cont'd*

Zecchel had indicated to the Buyer's agent earlier in the day on May 1, 2009 that, with respect to the Seller's Subject Clause, things "look well on my side".

RESULT: Jason Michael Zupp-Zecchel was reprimanded and was ordered to successfully complete the Trading Services Remedial Education Course, and pay enforcement expenses to the Council in the amount of \$1,000.00.

Behzad (Burt) Behzadi

ISSUE: Behzad (Burt) Behzadi, representative, Vernon Realty Ltd. dba Re/Max Vernon, Vernon, entered into a Consent Order with the Council in which he consented to an Order that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that: (a) contrary to section 3-4 of the Council Rules, he failed to ascertain the status of the removal or non-removal of the Seller's Subject Clause; and (b) contrary to one or more than one of section 3-3(1)(a) and section 3-4 of the Council Rules, he failed to advise the Buyer of the consequences of the non-receipt by Mr. Behzadi or the Buyer of a notice of waiver or fulfillment of the Seller's Subject Clause.

RESULT: Behzad (Burt) Behzadi was reprimanded and was ordered to successfully complete the Trading Services Remedial Education Course, and pay enforcement expenses to the Council in the amount of \$1,000.00.

Bonnie Lynn Johnston

ISSUE: Bonnie Lynn Johnston, representative, Camosun Properties Ltd. dba Re/Max Camosun, Victoria, entered into a Consent Order with the Council in which she consented to an Order that she committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that, while acting on behalf of a purchaser in the purchase of a unit in the development "Miravista", she failed to advise her client JS to obtain legal advice prior to entering into a firm Contract of Purchase and Sale, which she knew that JS could not complete due to the fact that JS could

not qualify for a mortgage should she be unable to assign the contract, contrary to section 3-3(1)(d) of the Council Rules.

RESULT: Bonnie Lynn Johnston was reprimanded and ordered to pay enforcement expenses to the Council in the amount of \$1,000.00.

Margaret Ying Ting Chen

ISSUE: Margaret Ying Ting Chen, currently unlicensed, entered into a Consent Order with the Council in which she consented to an Order that, while licensed as a representative with Fraseridge Realty Ltd. dba Amex-Fraseridge Realty, Vancouver, she committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that she, as representative in the sale of proposed strata lot xxx with a civic address on Brentwood Drive, Burnaby from BGHE Ltd. as seller to DS and WS as buyers by Contract of Purchase and Sale dated May 13, 2006 ("Contract"), failed to promptly deliver a copy of the Contract dated May 13, 2006 to her brokerage, contrary to sections 3-2(1)(b) and 5-4(b) of the Council Rules.

RESULT: Margaret Ying Ting Chen was reprimanded and ordered to pay enforcement expenses to the Council in the amount of \$1,000.00.

Cheryl Ann Taylor

ISSUE: Cheryl Ann Taylor, representative, Coast Realty Group (Campbell River) Ltd., Campbell River, entered into a Consent Order with the Council in which she consented to an Order that she committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that she, as representative for the sellers in the sale of Lot xx Sonora Island, BC together with a 1/12 interest in Lot xy Sonora Island, BC ("Property") from JF and TF ("Sellers") to EH ("Buyer") by Contract of Purchase and Sale dated April 22, 2008: (a) failed to promptly review a title search revealing the Sellers held an undivided 1/12 interest in a Right to Purchase (no. Bxxxxx) Lot xy Sonora Island, BC, the owner of which was registered in favour of SIE Ltd., rather

than a 1/12 interest in Lot xy, contrary to sections 3-3(1)(a) and (f) and 3-4 of the Council Rules; and (b) failed to ensure the Sellers were aware that they had agreed to convey to the Buyer on closing, inter alia, an undivided 1/12 interest in Lot xy Sonora Island, BC, when the title search showed the extent of the Sellers' interest to be the holder of an undivided 1/12 interest in a Right of Purchase (no. Bxxxxx) Lot xy Sonora Island, BC, the owner of which was registered in favour of SIE Ltd., contrary to sections 3-3(1)(a) and (f) and 3-4 of the Council Rules.

RESULT: Cheryl Ann Taylor was reprimanded and ordered to pay enforcement expenses to the Council in the amount of \$1,000.00.

Rental Management Services

Evelina Ortynski

ISSUE: Evelina Ortynski, currently unlicensed, entered into a Consent Order with the Council in which she consented to an Order that, while licensed as a representative with Stern Realty (1994) Ltd. dba Coldwell Banker Premier Realty, Vancouver, she committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that: (a) in the rental of a Property: (i) contrary to section 3(1)(a) of the *Real Estate Services Act*, she provided rental property management services when she was not licensed to do so, and was not exempted under section 9-1 of the Council Rules from the application of the *Real Estate Services Act* and the Council Rules to those services; (ii) contrary to section 7(3)(a) of the *Real Estate Services Act*, she provided real estate services other than on behalf of the brokerage in relation to which she was licensed, and was not exempted under 9-1 of the Council Rules from the application of the *Real Estate Services Act* and the Council Rules to those services; and (iii) contrary to section 7(3)(b) of the *Real Estate Services Act*, she was either entitled to or accepted remuneration in relation to real estate services from a person other than the brokerage in relation to which she was licensed, and was not exempted under section 9-1 of the Council Rules from the application of the *Real Estate Services Act* and the

Disciplinary Decisions, *cont'd*

Council Rules to those services; (b) in the provision of real estate services by Ms. Orzynski through her website: (i) contrary to section 3(1)(a) of the *Real Estate Services Act*, she provided rental property management services when she was not licensed to do so; and (ii) contrary to section 35(1)(d) of the *Real Estate Services Act*, she demonstrated incompetence in that she advertised her assistant, ND, as “a Real Estate investor/manager and business owner for many years” and represented that ND could “respond to any of their questions” and, being fluent in French, could “be of assistance to the people whom (sic) prefer to conduct their real estate transactions in French” all of which made it appear that ND was licensed to provide real estate services when she was not; and (c) in the provision of real estate services by Ms. Orzynski through her website and in the provision of real estate services by Ms. Orzynski generally through her company Malibu: (i) contrary to section 3(1)(a) of the *Real Estate Services Act*, she provided rental property management services when she was not licensed to do so; (ii) contrary to section 7(3)(a) of the *Real Estate Services Act*, she provided real estate services other than on behalf of the brokerage in relation to which she was licensed; and (iii) contrary to section 7(3)(b) of the *Real Estate Services Act*, she was either entitled to or accepted remuneration in relation to real estate services from a person other than the brokerage in relation to which she was licensed.

RESULT: Evelina Orzynski was ordered not to make an application for relicensing at any level for a period of fourteen (14) days of the date of the Order, which is from April 8, 2010 to April 21, 2010 (inclusive) and she was ordered to successfully complete the Trading Services Remedial Education Course, and pay enforcement expenses to the Council in the amount of \$1,000.00.

Sylvia Lillian Fierro

ISSUE: Sylvia Lillian Fierro, representative, Crest Realty Westside Ltd. dba Re/Max Crest Realty Westside, Vancouver, entered into a Consent Order with the Council in which she consented to an Order that she committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that she: (a) contravened section 7(3)(a) of the *Real Estate Services Act* by providing real estate trading services other than on behalf of the brokerage in relation to which she was licensed, in that she solicited owners of property and tenants on behalf of MO Investments Inc. dba 2010 Home Rentals, which was an unlicensed entity, to enter into tenancy arrangements with the said unlicensed entity; and (b) contravened section 3-2(2)(a) of the Council Rules in that she failed to keep her managing broker informed of the real estate services she was providing to or on behalf of MO Investments Inc.

dba 2010 Home Rentals after she commenced providing these services.

RESULT: Sylvia Lillian Fierro was reprimanded and was ordered to successfully complete the Trading Services Remedial Education Course, and pay enforcement expenses to the Council in the amount of \$1,000.00.

Strata Management Services

George Alexandru

ISSUE: George Alexandru, representative, Baywest Management Corporation (Van), Vancouver, entered into a Consent Order with the Council in which he consented to an Order that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he, provided ongoing strata management services to a strata corporation in or about January 2009, other than on behalf of his related brokerage, contrary to section 7(3)(a) of the *Real Estate Services Act*, when he required a prospective buyer's representative to pay \$50 for access to the roof and other inaccessible areas of the complex of the strata corporation client.

RESULT: George Alexandru was reprimanded and was ordered to pay enforcement expenses to the Council in the amount of \$1,000.00. ■

Feedback?

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

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