

# Report from Council

## Important Changes to Council Criminal Record Check Procedures Coming in July!

### What is changing?

For many years, the Real Estate Council has contracted with the Financial Institutions Commission (“FICOM”) to obtain criminal record checks in relation to licence applicants. FICOM has advised the Council that it will no longer be able to provide this service. In order to accommodate this change, effective July 22, 2011, the Council will require certain applicants to obtain and provide to the Council an original criminal record check at the time of applying for a licence.

### What does this mean?

In order to continue to provide appropriate consumer protection, the following applicants will be required to obtain an **original criminal record check** from their local police service and **submit it along with their application to the Council:**

- First-time licence applicants;
- Re-licence applicants (unlicensed for more than 90 days after licence expiry);
- Reinstatement licence applicants (those who have been unlicensed for more than 90 days within licence period);
- Director/officer or partner applicants who are not currently licenced or who have not been licensed or registered as a director/officer or partner under the *Real Estate Services Act* in the last 90 days; and
- Pre-screening applicants.

### When does this change occur?

In order to accommodate the timeline set out by FICOM, any applications, as

noted above, submitted to the Council’s office after July 22, 2011 must be accompanied by an original criminal record check obtained by the applicant.

**Note:** As the Council will continue to utilize FICOM’s criminal record check services until July 22, 2011, **please do not have licence applicants provide their own criminal record check prior to this date.**

### Important Information

- Criminal record checks provided to the Council must be dated **within 90 days** of the date the Council receives the licence application.
- Licence applicants must have their criminal record check completed by the municipal police agency or RCMP detachment where they live.
- Licence applicants should contact their local police agency before attending its office to confirm hours of operation, fees and method of payment.
- Licence applicants should note that only **original documents** will be accepted. The Council will not accept photocopies of criminal record checks.



- If an applicant has a criminal record, they must provide a **Certified Criminal Record Check**, which must be obtained by fingerprints. This process will take an additional period of time, so it is suggested that the applicant discuss the process with the police agency they are dealing with well in advance of submitting their application for licence.

### Further Information

Further information, including more specific instructions on how to go about obtaining a criminal record check, will be available on the Council’s website. In the meantime, please contact the Council if you have any questions at 604-683-9664, toll-free 1-877-683-9664 or email [info@recbc.ca](mailto:info@recbc.ca). ■

### This Issue:

- Changes to Council Criminal Record Check
- Council Election Results
- Builders Lien Holdback Account
- Council Rule and Bylaw Changes
- Consumers and their Choices

- Guidelines for Team Names
- Working with a Strata Management Company Brochure Available on Council’s Website
- Revised Disclosure of Benefits Form for Rental and Strata Property Managers

- Real Estate Foundation of BC
- Reminder About Property Inspections
- Notice of Licensee Resignation & Suspension
- Disciplinary Decisions

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

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

**Real Estate Council of BC**  
CHAIR—Gerry Martin  
VICE-CHAIR—Bryon Brandle  
EXECUTIVE OFFICER—Robert O. Fawcett

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William (Bill) Brown  
Marshall Cowe  
Subhadra Ghose  
Abdul Ghouri  
Susan McGougan  
Jim McNeal  
John Nagy  
Patrick O'Donnell  
William (Bill) Phillips  
Bruce Turner  
Liz Tutt  
Michael Ziegler

**STATISTICS**

June 2011

Representatives: 17,527  
Associate Brokers: 1,749  
Managing Brokers: 1,335  
Total Licensees: 20,611  
Brokerages (including branch offices  
and sole proprietors): 1,435

**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](http://www.recbc.ca).

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# A Note from the Chair



Gerry Martin,  
Chair

On June 30, 2011, my term as Chair of Council will end but I will continue to serve for one further year as the broker/associate broker member for the County of Westminster, south of the Fraser River. Serving as Council Chair has been the most rewarding of my 33 years in real estate and we are indeed fortunate to live and work

in this wonderful province. The level and expertise of organized real estate in BC is unsurpassed in Canada, if not the world. I would like to thank the managing brokers and associate brokers who have supported me through three elections... it has been my extreme pleasure to serve the industry. There are 15 other members of Council, as listed on the right of this article, and they have my most sincere thanks for their service and dedication to Council.

On July 1st, the Council welcomes newly elected members Garth Cambrey of North Vancouver, Marylou Leslie of Delta and Susan Lynch of Prince George. We also welcome back re-elected members Bryon Brandle, Abdul Ghouri, Patrick O'Donnell and Michael Ziegler.

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

- The British Columbia Real Estate Association and its member boards/associations and, in particular, President Moss Moloney and Chief Executive Officer Robert Laing.
- 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.
- The volunteers who serve on the Council's Education, Rental Property Management, Strata Management and Commercial advisory groups.
- Vice-Chair Bryon Brandle 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.

I have had the opportunity to work with an extremely competent and capable Executive Officer, Robert Fawcett. My thanks to Robert and all the hard working staff at the Council for their assistance throughout my year as Chair.

Respectfully,

Gerry Martin  
Chair

## Receive the Council Newsletter By Email

Licensees wishing to receive the *Report from Council* newsletter by email instead of hard copy can email the Council office at [info@recbc.ca](mailto:info@recbc.ca). Please include your full legal name in your email. Licensees with questions can contact the Council at 604-683-9664, toll-free 1-877-683-9664. ■

# 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, 2011.

## New Council Members

### All Districts – Rental Property/Strata Management Member

- J. Garth Cambrey, Stratawest Management Ltd., North Vancouver (licensed for 26 years)

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

- Marylou Leslie, Re/Max Performance Realty, Delta (licensed for 21 years)

### District #7 – Combined Counties of Kootenay, Cariboo and Prince Rupert (managing broker/associate broker member)

- Susan Lynch, Re/Max Centre City Realty, Prince George (licensed for 23 years)

## Re-elected Council Members

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

- Patrick J. O'Donnell, Prudential Sussex Realty, West Vancouver (licensed for 27 years)

### District #1 – County of Vancouver (representative member)

- Abdul R. Ghouri, Royal Pacific Realty (Kingsway) Ltd., Vancouver (licensed for 27 years)

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

- Michael Ziegler, Newport Realty Ltd., Victoria (licensed for 35 years)

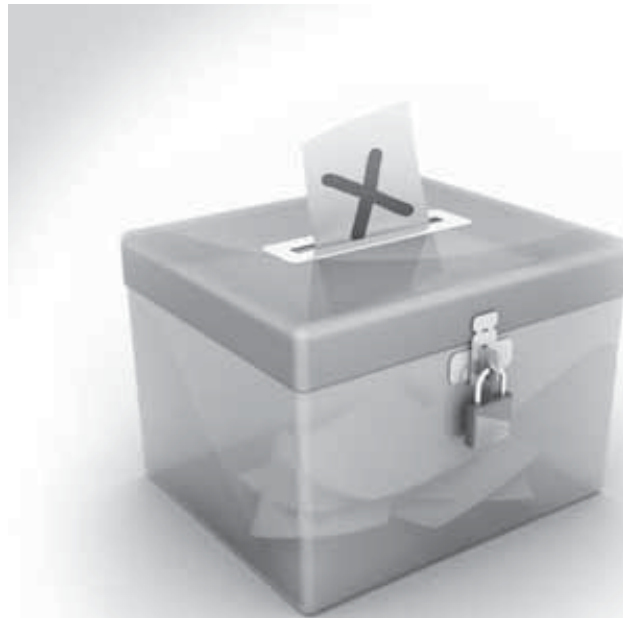
### District #6 – County of Yale (managing/associate broker member)

- Bryon R. Brandle, Re/Max Armstrong, Armstrong and Re/Max—Vernon, Silver Star (licensed for 27 years)

## The following Council members have a further year to serve

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

- William (Bill) Binnie, Royal LePage Northshore, West Vancouver (licensed for 36 years)



*Council member terms commence July 1, 2011*

- William (Bill) Phillips, Whistler Real Estate Company Limited, Whistler (licensed for 36 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 20 years)

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

- Susan McGougan, Re/Max of Nanaimo, Nanaimo (licensed for 20 years)

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

- Marshall Cowe, Royal LePage Coronation West Realty, Coquitlam (licensed for 39 years)

### District #5 – County of Westminster (South of the Fraser River) (managing/associate broker member)

- Gerry Martin, B.C. Farm & Ranch Realty Corp., Abbotsford (licensed for 32 years)

## Government appointed public members

The Council's government appointed public members are: Barbara Barry of West Vancouver, John Nagy of Richmond and Bruce Turner of Courtenay.

## Retiring from Council

- William Brown, Brown Bros. Agencies, Victoria, after six years of service.
- Jim McNeal, Royal LePage Prince George Realty, Prince George, after six years of service.
- Liz Tutt, Re/Max Nyda Realty, Chilliwack, after five years of service. ■

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# Builders Lien Holdback Account

## 1. Builders Lien Act—The Holdback

The *Builders Lien Act* provides a form of security to contractors, subcontractors, workers and suppliers who work on a building that is under construction—the builders lien. A builders lien is a charge on property by a person who has supplied work or material to a building under construction. A builders lien may be claimed by a contractor, subcontractor or worker.<sup>1</sup>

The *Builders Lien Act* also creates a pool of money out of which claims may be paid, by requiring an owner to hold back 10% of each payment to the contractor—the builders lien holdback. The builders lien holdback provides two functions:

- It ensures that there is a pool of money out of which builders lien claims can be paid, although it does not guarantee payment of those claims. The requirement for owners to establish a holdback account is clearly intended to give the contractor and the subcontractors comfort that the holdback funds are indeed available. It also aims to assure the contractor and subcontractors that they will not be, for example, at the mercy of a mortgagee or owner who must come up with the holdback funds at the end of the project.
- It limits an owner's liability for lien claims. If an owner complies with the holdback provisions of the *Builders Lien Act*, the owner's maximum liability for lien claims will be limited to the amount of the 10% holdback or the unpaid balance of the contract price, whichever is greater.

The *Builders Lien Act* helps to ensure that money intended to finance construction is used for that purpose by imposing a trust on money received by contractors and subcontractors in connection with the construction project—the statutory

or deemed trust. The holdback account will be treated like a trust account. Contractors and subcontractors are deemed to be trustees of the money received by them. The persons engaged directly by them are the beneficiaries of the particular trust fund.

## 2. The Holdback Account

The *Builders Lien Act* creates a mandatory obligation to retain a 10% holdback on the “person primarily liable on each contract, and the person primarily liable on each subcontract, under which a lien may arise under this Act”<sup>2</sup>. In the case of work being done on behalf of a strata corporation, the persons primarily liable would be the strata corporation in the case of a contract with a contractor and the contractor in the case of each subcontract. It is not sufficient that the owner (the strata corporation, in this case) simply holds back 10% of the payment amount from the contractor; the monies must actually be paid into the holdback account. If the owner acts as the general contractor, a separate holdback account will be required for every contract with the owner.

## 3. Establishing the Holdback Account

There are no regulations prescribing how the holdback account must be established and managed. The only conditions relating to the operation of the account are that the interest on the account is to be to the credit of the owner to the date it is due and to the contractor after the date the holdback is due. There are no rules setting out, for example, whether the account is to have joint signatories, and whether all payments out of the holdback account are to be directly to the contractor or to a subcontractor when the progressive releases or payments are made.<sup>3</sup> The parties are thus left with a wide discretion for what they can agree to con-

cerning the management of the account and these issues are often addressed in the contract executed by the parties.

For every progress payment under the contract, 90% of the price of the work completed in any month is paid by the owner to the contractor or contractors, and 10% is retained as a holdback that must be paid into the holdback account. At the end of the contract, the amount in the account should equal 10% of the contract price.

At the direction of their strata corporation client, a strata manager can establish the account with its usual financial institution, with the account set up in the usual manner, but with a reference to it being a “holdback account for Strata Corporation \_\_\_\_”. If there are to be multiple accounts due to the strata corporation acting as the general contractor, the accounts could be set up as follows: “holdback account for Strata Corporation \_\_\_\_ –Contract A; holdback account for Strata Corporation \_\_\_\_ –Contract B,” and so on.

## 4. Exemptions from the requirement to establish Holdback Account

There are two major exceptions to the requirement that the 10% lien holdback be paid into an actual account.

The first is where the owner has a construction mortgage with a “savings institution” and authorizes the savings institution to disburse the mortgage money. In that case, the lender may hold back 10% of the mortgage money from each mortgage draw, and the lender will be liable to the owner and any lien holders if it fails to fulfill its obligations in relation to the holdback. Mortgage lenders do not want to supervise holdbacks and will rarely agree to this arrangement. Most lenders will instead advance 100% of each draw, but will contractually require that the owner pay the 10% into the holdback account.

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<sup>1</sup> These are all defined terms under the *Builders Lien Act* and may also include architects, engineers and suppliers of materials.

<sup>2</sup> Section 4 of the *Builders Lien Act*

<sup>3</sup> Sections 8 and 9 of the *Builders Lien Act*

*The Builders Lien Act creates a mandatory obligation to retain a 10% holdback on the “person primarily liable on each contract, and the person primarily liable on each subcontract”*



The second is where the total value of work and materials is less than \$100,000 (e.g. renovations and smaller projects).

Clearly, if there is a general contractor and the contract price exceeds \$100,000, the owner must establish the account. However, consider a situation in which a contract at first is less than \$100,000, but as a result of changes, eventually exceeds the amount. It would be difficult to allege the owner was then in default of the *Builders Lien Act* if the owner did not voluntarily set up an account.

The same is true on a cost-plus contract where there is no specific amount for the value of the improvement or the contract. Presumably, there will be budgets or estimates that will show if the anticipated value of the work exceeds \$100,000 and, if it does, then the account must be established.

The *Builders Lien Act* does not indicate if the \$100,000 limit includes HST. Although HST is considered to be a lienable part of the contract price, the appli-

cability of taxes is a separate issue that remains unanswered.<sup>4</sup> The conservative approach is to assume that if the HST takes the value of the project over the \$100,000 threshold, a strata corporation should establish the account.

Problems arise in the construction management scenario where there is no “head contractor” as defined in the *Builders Lien Act*.<sup>5</sup> In construction management structures, all of the trade contractors, who normally act as subcontractors, contract directly with the owner. The construction manager only receives payment of his or her own fees and does not receive funds from the owner to be passed on to the trade or subcontractors. Payment is made directly by the owner to the trade contractor. The problems arise in relation to the exemption as to whether the \$100,000 threshold relates to the value of the individual owner/trade contractor contracts or to the aggregate value of the improvements. There is no authority clearly determining whether or not an owner has to establish and maintain the holdback account in such circumstances, but the more conservative position is to establish the holdback if the total value of all contracts exceeds \$100,000.

Note that the holdback is mandatory. The person primarily liable must retain the 10% holdback and there is no option to the owner but to retain at least that amount, even if they do not have to establish the holdback account due to falling within one of the exemptions.

#### **5. Payment of Interest Accruing in the Holdback Account**

Interest on monies on deposit in the holdback account accrues to the benefit of the owner until the holdback payment is due to be released, and to the contractor after payment of the holdback is due to be released.<sup>6</sup>

#### **6. Failure to Establish the Holdback Account**

The failure of the owner to pay the holdback into a holdback account is an event of default under the construction contract, irrespective of the wording of the contract.<sup>7</sup> If the owner fails to establish the account or make the payments into the account, the contractor can give a 10-day notice, and if the default is not corrected in that time, the contractor may stop work. Typically, during this period, the holdback funds are paid into the newly established holdback account. ■

<sup>4</sup> Section 5(8) of the *Builders Lien Act*

<sup>5</sup> Section 1(1) of the *Builders Lien Act*

<sup>6</sup> Section 5(6) of the *Builders Lien Act*

<sup>7</sup> Section 4 of the *Builders Lien Act*

# Council Rule and Bylaw Changes

At its meeting on June 21, 2011, the Council approved a number of amendments to the Council Rules. These changes include amendments to sections 2-9 [Education re-qualification on reinstatement], 4-7 [False or misleading advertising prohibited], 7-5 [Negative balances in trust accounts and trust records], and 7-8 [Requirement to ensure solvency and cover negative balances]. The changes to sections 2-9, 7-5, and 7-8 are minor changes to clarify wording.

The change to section 4-7 is intended to broaden requirements related to false or misleading advertising.

In addition to these changes, the Council, at its May 2, 2011 meeting, approved two changes to its Bylaws relating to criminal record checks as noted below.

As a result of feedback received during

the consultation period, three proposed new rules related to inducements and referral fee record keeping requirements were withdrawn to allow further consideration.

The amended Rules and Bylaws come into effect August 1, 2011.

Licensees with questions can contact the Council at 604-683-9664, toll-free 1-877-683-9664 or email [info@recbc.ca](mailto:info@recbc.ca). ■

Rule Changes	Description
<p><b>Education re-qualification on reinstatement</b></p> <p><b>2-9</b> (1) This section applies to a representative licence that has</p> <ul style="list-style-type: none"> <li>(a) become inoperative under section 22 (1) [person ceases to be engaged by brokerage] of the Act,</li> <li>(b) been suspended under section 116 (4) [person fails to provide required security] of the Act, or</li> <li>(c) been voluntarily surrendered to the council.</li> </ul> <p>(2) In order to have the licence reinstated, an applicant who has less than 5 years of continuous licensing at some time before the licence became inoperative, was suspended or was surrendered must meet the requirements of</p> <ul style="list-style-type: none"> <li>(a) section 2-8 (1) (b) [pre-licensing examinations] of these rules, and</li> <li>(b) section 2-8 (2) [applied practice course] of these rules.</li> </ul> <p>(3) For the purpose of this section, if an applicant ceased to be licensed for</p> <ul style="list-style-type: none"> <li>(a) a period of 30 days or less,</li> <li>(b) a period approved by the council during which the applicant was on parental leave, or</li> <li>(c) a period during which the applicant was registered under the <i>Mortgage Brokers Act</i>,</li> </ul> <p>the applicant is deemed to have continued to be licensed during that period.</p>	<p>Licensing examinations are no longer referred to as 'pre-licensing examinations'. Eliminating the reference to 'pre-' creates consistency of terminology.</p>
<p><b>False or misleading advertising prohibited</b></p> <p><b>4-7</b> A licensee must not publish real estate advertising that the licensee knows, <a href="#">or reasonably ought to know</a>, contains a false <a href="#">or misleading</a> statement or misrepresentation concerning real estate, a trade in real estate or the provision of real estate services.</p>	<p>Expands the current requirement with respect to false or misleading advertising to include advertising which a licensee reasonably ought to know is false or misleading.</p>
<p><b>Shortages Negative balances in trust accounts and trust records</b></p> <p><b>7-5</b> (1) A brokerage must not make any payment out of a trust account if</p> <ul style="list-style-type: none"> <li>(a) the payment would reduce the amount currently recorded in a trust account record or a trust ledger for the account to a negative balance, or</li> <li>(b) the trust account record or trust ledger to which the payment relates is already at a negative balance.</li> </ul> <p>(2) If at any time there is a negative balance referred to in subsection (1), the brokerage must take immediate steps to eliminate the negative balance.</p> <p>(3) The brokerage must notify the council of a negative balance referred to in subsection (1) as follows:</p>	<p>Wording change in the 'header' to create consistency with the body of the rule.</p>

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## Rule Changes

## Description

- (a) immediately, if a related managing broker considers that the negative balance may result in a person having a claim for a compensable loss in relation to the brokerage;
- (b) in any other case, no later than 10 days after the day on which the negative balance arose, unless the brokerage is able to eliminate the negative balance in that time.

### Requirement to ensure solvency and cover [shortages negative balances](#)

**7-8** (1) This section applies in any of the following circumstances:

- (a) if a brokerage notifies the council under section 2-20 [*notice respecting solvency*] of these rules that it is not able to pay its debts as they become due;
  - (b) if a brokerage notifies the council under section 7-5 (3) [*notice respecting [shortages negative balances](#)*] of these rules that there is a negative balance in a trust account record or trust ledger;
  - (c) the annual financial reports under section 7-7 [*annual financial statements, accountant's report and brokerage activity report*] of these rules disclose that, as of the end of the brokerage's fiscal year,
    - (i) the brokerage's current liabilities exceed its current assets, or
    - (ii) the brokerage's total liabilities exceed its total assets; or
  - (d) a review under section 7-6 [*council review of accounts and other records*] of these rules indicates
    - (i) a circumstance for which notice is required as referred to in paragraph (a) or (b), or
    - (ii) either of the circumstances referred to in paragraph (c).
- (2) The council may require the brokerage to do one or more of the following:
- (a) explain why the shortage or other deficiency arose;
  - (b) pay money into a trust account to cover a [shortage negative balance](#) in the trust account;
  - (c) re-establish the brokerage to a state of solvency;
  - (d) provide a bond or other form of security.
- (3) A requirement under subsection (2) (b) applies despite section 27 (5) [*restriction on payment into brokerage trust accounts*] of the Act and section 7-2 (b) [*restriction on payment into commission trust accounts*] of these rules.

Creates consistency in wording between this section and section 7-5 of the Council Rules (see above).

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## Bylaw Changes

## Description

### Applications for new licences

**4-4** (1) *General requirements related to applications*—An application for a new licence, other than a branch office licence, must contain, or have attached to it, the following:

....

- (h) in the case of an individual applicant,
  - (i) the applicant's employment history,
  - (ii) [a criminal record check in a form satisfactory to the council](#), and ~~(ii) the applicant's consent to the council obtaining a criminal record check~~,
  - (iii) information required by the council to ~~obtain-verify~~ a criminal record check on the applicant, including
    - (A) the applicant's place and date of birth,
    - (B) if the applicant was born outside Canada, the date of the applicant's arrival in Canada,
    - (C) any previous legal names of the applicant, and other names by which the applicant is or has been known,
    - (D) if the applicant has resided outside of Canada for any period, the dates and locations of these periods of residency, [and](#)

For many years the Council has contracted with the Financial Institutions Commission (FICOM) to obtain criminal record checks in relation to licence applicants. FICOM has advised the Council that it will no longer be able to provide this service. As of July 22, 2011, the Council will, therefore, require new applicants to obtain and provide to the Council a criminal record check at the time of applying for a licence, along with information and consent necessary for the Council to verify the accuracy and details of the criminal record check. This amendment establishes the details of this changed process.

*Continues on p8*

- (E) ~~the applicant's written consent, in a form required by the council, allowing the council to verify the accuracy of the criminal record check.~~
  - (E) a true copy of each of two pieces of government-issued identification acceptable to the council, at least one of which must bear a clear and true photographic likeness of the applicant; and
  - (F) ~~certification, of a person belonging to an occupational group acceptable to the council in a form approved by the council, that the person providing the certification has seen the original documents of which copies are provided under subsection (1)(h)(iii)(E); that the copies provided are true copies of those original documents; and that the photograph appearing on at least one of the copies is a true likeness of the applicant;~~
- (i) a dated and signed certification by the applicant that the information and statements contained in the application or attachments are true and complete.

#### Applications for licence renewal

- 4-6 (1)** *General requirements related to applications*—An application for a licence renewal, other than renewal of a branch office licence, must contain, or have attached to it, the following:
- (a) the information referred to in section 4-4 (1) (a) to (c) [*applications for new licences*] of these bylaws;
  - (b) the information referred to in section 4-4 (1) (d) to (g) [*applications for new licences*] of these bylaws, in relation to any matters that have occurred since the most recent application for a new licence, licence renewal or licence reinstatement made by the applicant;
  - (c) in the case of an individual applicant, ~~if requested by the council, a criminal record check, in a form satisfactory to the council and the information and consent referred to in section 4-4(1)(h)(iii) of these bylaws~~ the applicant's consent to the council obtaining a criminal record check;
  - (d) a dated and signed certification by the applicant that the information and statements contained in the application or attachments are true and complete.

Similar to changes proposed to section 4-4 above, this amendment will allow the Council to require an applicant for licence renewal, if requested by the Council, to obtain and provide the Council with a criminal record check as well as information and consent necessary to verify the accuracy and details of the criminal record check



## Consumers Have the Right to Make their Own Choices

On occasion, the Council is informed of a licensee who fails to respect a consumer's decision to engage a particular service provider. Regardless of whether that service provider is another real estate licensee, a home inspector, an appraiser, etc., consumers have the right to make their own decisions about the scope of services they wish to receive, and to make their own decisions concerning whom they wish to engage to provide those services.

It is inappropriate to disparage a person's choices in this regard, or to publicly disparage a particular service provider. The Council reminds licensees that evidence of such behavior may result in a finding of professional misconduct or conduct unbecoming a licensee. ■

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# Guidelines for Team Names

Section 4-6(5) of the Council Rules provides that, “If the Council approves a team name for a group of related licensees, real estate advertising may also identify the group by this team name.”

Approvals of team names are made on a case-by-case basis. In order to have a team name approved, licensees are simply required to submit their request to the Council, in writing, setting out:

- the team name they would like to have approved; and
- the names of the members of the team, both licensed and unlicensed.

Licensees may submit more than one team name for consideration, indicating their order of preference of names for approval. Only one name will be approved.

Over the years, the Council has developed and adopted the following general guidelines to be applied in the approval of team names:

- To ensure that the public is not mislead or confused, a team name must not give the impression of being an incorporated company or brokerage, i.e. Joe Blogg and Company, Joe Blogg Realty, Blogg Real Estate Services.
- Acceptable team names, for example, may include the words, “Team”,

“Group”, “Associates”, “Network.”

- No team name will be approved that may be confused with an existing brokerage.
- No team name will be approved that is identical to an existing, approved team name.
- A team must consist of more than one person and include at least one licensee.
- Any unlicensed team member must be identified as being unlicensed in any team advertising in which they appear.
- All licensed team members must be licensed with the same brokerage.

Typically, once a request for a team name approval is received by the Council, the licensee who submitted the request will be advised within a week to ten days, in writing, whether or not the name has been approved. The managing broker will be copied with the Council’s letter.

It is the obligation of the licensed team members to advise the Council, in writing, when any team member leaves the team or a new member joins. This requirement also applies when a team member transfers or surrenders their licence.

It is important that all teams remain mindful of the requirement that, in all advertising, the name of their brokerage must be



prominently displayed and easily readable in relation to the rest of the advertisement. For example, including the name of the brokerage at the bottom of a website, in small print, does not satisfy the requirements of 4-6(2) of the Council Rules.

Additionally, it is important for all licensed team members to remember that, as individual licensees, they maintain their obligation to comply with all of the provisions of the *Real Estate Services Act*, the Regulations, Bylaws and Council Rules. The fact that one licensee member of the team may be promoted as the “lead” licensee of the team in no way diminishes the other team members’ legislated responsibilities and obligations to comply. ■

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## Working with a Strata Management Company Brochure Available on Council’s Website

In order to assist strata corporations, the Council, with the assistance of its Strata Management Advisory Group, has created a useful information brochure entitled “*Working With a Strata Management Company*”. The brochure is designed to help strata corporations understand:

- the role that a strata management company can play in assisting strata councils with their duties,

- the relationship between the strata management company and the strata corporation, and;
- the significance of the contract entered into by the strata corporation for the provision of strata management services.

The “*Working With a Strata Management Company*” brochure is available on the Council’s website at

[www.recbc.ca/consumer/stratabrochure.htm](http://www.recbc.ca/consumer/stratabrochure.htm). The Council encourages all licensees engaged in providing strata management services to review the brochure.

Licensees with comments or questions can contact the Council at 604-683-9664, toll-free 1-877-683-9664 or email [info@recbc.ca](mailto:info@recbc.ca). ■

# Revised Disclosure of Benefits Form for Rental and Strata Property Managers

The Council has updated its Disclosure of Benefits Form for Rental and Strata Property Managers. As licensees are aware, under section 5-12 of the Council Rules, licensees engaged in rental property management or strata management must disclose to the licensee's principal and to the related brokerage certain benefits that the rental property manager or strata manager anticipates receiving as a result of the management of the rental property or the strata corporation. The disclosure must be made before the benefit is accepted.

The revised Disclosure of Benefits Form can be found on the "Forms & Fees" page on the Council's website at [www.recbc.ca](http://www.recbc.ca). It is important to note that licensees are not required to use the Council's Disclosure of Benefits Form—Licensees are free to use whatever form of disclosure they choose, so long as it satisfies the disclosure requirements of section 5-12 of the Council Rules.

Disclosure is required if the rental property manager or the strata manager anticipates receiving, either directly or indirectly, a benefit from expenditures made by or on behalf of a principal to whom the rental property or strata management services are provided. Disclosure must also be made if it is anticipated that an associate of the licensee will receive a benefit as a result of an expenditure on behalf of the principal.

A benefit from an expenditure may be an administration fee that the manager charges each time the manager writes a cheque on behalf of his or her principal. A benefit would also arise, and must be disclosed, if the manager retained a person or corporation that meets the definition of associate, to perform services for the principal. Thus, for example, if a manager engaged a company in which the manager, or his or her spouse or family partner, owned not less than 5% of



the capital to perform work for the principal, the manager would be required to disclose the benefit to the principal and to the related brokerage before the associated company was engaged.

The disclosure of a benefit must be in writing and must be separate from the service agreement or any other agreement under which real estate services are provided. This means that it is not sufficient for a rental property manager or strata manager to include reference to an administration fee or the fact that an associated company will provide services to the property owner or strata corporation in the service agreement. Where a benefit is to be received from an expenditure, the disclosure must be in a separate written document.

Licensees with questions can contact the Council at 604-683-9664, toll-free 1-877-683-9664 or email [info@recbc.ca](mailto:info@recbc.ca). ■

*Disclosure is required if the rental property manager or the strata manager anticipates receiving, either directly or indirectly, a benefit from expenditures made by or on behalf of a principal to whom the rental property or strata management services are provided*

# The Real Estate Foundation of BC:

## Supporting the Real Estate Industry and BC Communities



*The following information was provided by Jack Wong, the new Chief Executive Officer of the Real Estate Foundation. Jack took over from Karin Kirkpatrick as the Foundation's Chief Executive Officer in February of this year.*

Under provincial legislation, the Real Estate Foundation of BC receives interest from pooled trust deposits held by real estate brokerages and uses the funds to support real estate related education, research, law reform and other real estate related activities intended for the public or professional good.

The Foundation's strategic mandate focuses on sustainable land use and development that respects eco-systems to build quality of life in BC communities. We believe that supporting the continued professional development of the real estate industry is an important part of promoting responsible and sustainable real estate practices for the benefit of British Columbians.

Since it began making grants 23 years ago, the Foundation has supported the BC Real Estate Association and local real estate boards, the Real Estate Institute of BC, and the Real Estate Council of BC by approving over \$2 million in grants specifically for licensee course development and industry continuing education.

In addition, the Foundation has provided the Real Estate Division at the University of British Columbia's Sauder School of Business over \$1.4 million in



*As a steward of public funds, the Foundation appreciates the efforts of brokerages to help us give back to communities.*

endowments to support research and academic excellence in the profession.

From its beginnings, the Foundation has supported change agents: BC organizations large and small that develop, share, and use current land use and real estate knowledge to plan for and develop more sustainable communities. The Real Estate Foundation has been able to support the efforts of these organizations, whose work has benefited towns, cities, and regions across the province.

As the Foundation's income is primarily generated from real estate activity, real estate brokerages also serve the community through the work of the Real Estate Foundation. By ensuring the "flow-through" trust accounts

are administered pursuant to the *Real Estate Services Act*, and by encouraging the financial institutions where they do business to offer favourable trust account agreements with the Foundation, BC real estate brokerages support the Real Estate Foundation's good work. As a steward of public funds, the Foundation appreciates the efforts of brokerages to help us give back to communities.

If you would like information on how your financial institution can be more involved in supporting BC's communities or have any questions on your brokerage deposit payments, please contact the Foundation office at 604-688-6800 or toll-free 1-866-912-6800. For more on the Foundation, visit [www.refbc.com](http://www.refbc.com). ■

# Reminder About Property Inspections

In recent years, pre-purchase property inspections have become more common in the marketplace. The Council considers this a positive development in that a property inspection will assist the buyer in understanding, prior to the purchase, the condition of the property and what repairs may be necessary.

For this reason, a buyer's agent should always advise a buyer to have an independent inspection of a property, and the licensee should explain the importance of why such an inspection is necessary and that licensees are typically not qualified to provide home inspection advice. If a buyer chooses not to have an inspection, the agent's advice to do so should be documented.

In some cases, in addition to a buyer wanting to have the property inspected, a seller may also want such an inspection before listing the property for sale so that the seller is aware of what issues the property inspection report may identify.

If a licensee intends to refer clients to a property inspector, the safest way to do so is to provide a list of at least three professionals with whom the licensee, or others he or she knows, has dealt and have the client call, interview, and select them independently. It is recommended that licensees avoid "steering" buyers towards particular service providers or communicating information about their fees.

As of March 1, 2009, providing a property inspection for a fee became an activity for which a licence is required. Consumer Protection BC is the agency responsible for property inspector licensing. For further information, visit [www.consumerprotectionbc.ca](http://www.consumerprotectionbc.ca).

Licensees should exercise care in selecting those to be included in this list of service providers. Before making a referral, licensees should ensure the individual is properly licensed, consider the inspector's experience and credentials and also what insurance coverage the inspector carries, such as errors and omissions insurance,



*A buyer's agent should always advise a buyer to have an independent inspection of a property, and explain why such an inspection is necessary*

liability insurance and worker's compensation coverage.

**Once a buyer has determined which property inspector is to be used, licensees must respect the client relationship this creates between the buyer and the property inspector. The buyer is paying the property inspector for professional advice with respect to the condition of the property they are considering purchasing. Licensees should not attempt to thwart that relationship either by downplaying the importance of deficiencies noted by property inspectors or by making disparaging comments about the buyer's choice of property inspectors.**

As with any subject clause, the length of time allowed for its removal should be reasonable while not being unnecessarily long. In the case of property inspections, sufficient time is required to arrange and conduct the inspection, prepare the report, and have the report reviewed by the buyer. The goal is to ensure the buyer has full knowledge of the results of the inspection and, if necessary, clarification from the inspector or any other qualified person as required.

In order to avoid the possibility or even the appearance of a conflict of interest,

licensees are advised not to pay the cost of the inspection report on behalf of a buyer. If the licensee were to pay, the inspector could be suspected of not wanting to jeopardize the transaction of the person paying him or her, who might or might not ask for his or her services in the future, depending on the conclusions of the inspection report.

Finally, as with any referral, section 5-11 of the Council Rules requires that if a licensee is to receive a referral fee or other consideration from a property inspector, this must be disclosed in writing to the licensee's client.

A question often arises whether the seller's agent should be present during the inspection. The Council recommends that the seller's agent either be present or obtain permission from the seller that the seller's agent is not required to be present during the inspection. In making this decision, the seller should be advised whether the buyer and/or the buyer's agent intend to be present when the property inspector views the property. If the seller agrees that the seller's agent does not need to be present, the seller's agent should obtain the full name and address of the inspector as well as information on whether the inspector is bonded. ■

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# Notice of Licensee Resignation

## Janet Margaret Ann Fryer

Janet Margaret Ann Fryer, while licensed with Grand Forks Realty Ltd., Grand Forks, 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. Fryer 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 again, the Real Estate Council agreed with Ms. Fryer's request. The lifetime ban on Ms. Fryer's licensing under the *Real Estate Services Act* is effective as of April 18, 2011.

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# Notice of Licensee Suspension

## Amarjit Singh Badesha

**ISSUE:** As reported in the April 2011 *Report from Council* newsletter, Amarjit Singh Badesha, representative, Royal Pro Real Estate Network Inc., Surrey, entered into a Consent Order with the Council in which he consented to an Order that, while licensed with Lighthouse Realty Ltd., Abbotsford, he committed professional misconduct within the meaning of

section 35(1)(a) of the *Real Estate Services Act* in that he failed to prepare a Disclosure of Interest in Trade when he was added as a director of the corporate assignee, contrary to section 5-9 of the Council Rules.

**RESULT:** Amarjit Singh Badesha 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.

**SUSPENSION ORDER:** As Mr. Badesha had not completed the Trading Services Remedial Education Course by the deadline of April 17, 2011, and not surrendered his licence to the Council, Mr. Badesha's licence is hereby suspended until such time as he successfully completes the Trading Services Remedial Education Course.

## Disciplinary Decisions

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

### Trading Services

#### Robert Earl (Tim) Timmath

**ISSUE:** Robert Earl (Tim) Timmath, managing broker, 621104 B.C. Ltd. dba Homelife Benchmark Titus Realty, Surrey, entered into a Consent Order with the Council that he committed professional misconduct within the meaning of section 35(1) of the *Real Estate Services Act* in that he: (a) in connection with Council File 07-545, he: (i) contrary to section 3-1(2) of the Council Rules, failed to take reasonable steps to respond to the clients' allegation that a representative had mis-conducted herself by forging the clients' signatures on the Amendment Forms dated January 10, 2008 and February

4, 2008 in that he failed to undertake an adequate level of investigation of the clients' complaint and failed to impose sufficient remedial measures on the representative, given her acknowledgement that she had forged the clients' signatures on the Amendment Forms; (ii) contrary to section 35(1)(c) of the *Real Estate Services Act*, demonstrated incompetence in that, when he learned the representative had forged the clients' signatures on the Amendment Forms, he failed to advise the representative of the requirement of section 5-3(1) of the Council Rules that she obtain written authorization of a client before signing a contract on behalf of the client; (iii) contrary to section 6(2) of the *Real Estate Services Act* and section 3-1(1) of the Council Rules, failed to be engaged actively in the management of the brokerage to ensure that the business of the brokerage was carried out competently and in accordance with the Act, Regulations, Council Rules and Bylaws, as applicable; and to ensure that there was an adequate level of supervision for relat-

ed associate brokers and representatives; (iv) contrary to section 3-1(3)(a) of the Council Rules, failed to ensure that the brokerage maintained proper books, accounts, and other records in accordance with the Act and Council Rules; and (b) in connection with Council File 08-142, he: (i) contrary to section 6(2) of the *Real Estate Services Act* and section 3-1(1) of the Council Rules, failed to be engaged actively in the management of the brokerage; to ensure that the business of the brokerage was carried out competently and in accordance with the Act, Regulations, Council Rules, and Bylaws, as applicable; and to ensure that there was an adequate level of supervision for related associate brokers and representatives; and (ii) contrary to section 3-1(3) of the Council Rules, failed to ensure that the brokerage maintained proper books, accounts, and other records in accordance with the Act and Council Rules.

**RESULT:** Robert Earl (Tim) Timmath's primary licence as the managing broker

## Disciplinary Decisions, *cont'd*

for Homelife Benchmark Titus Realty and his secondary licence as the managing broker for Homelife Benchmark Titus Realty's branch office in Delta were suspended for 365 days from June 22, 2011 to June 20, 2012 (inclusive) but he is immediately eligible to be licensed as an associate broker or representative during the course of the suspension. Further, Robert Earl (Tim) Timmath was ordered to successfully complete the disciplinary education assignments applicable to Chapter 2 (The *Real Estate Services Act*) of the Real Estate Trading Services Licensing Course, pay \$2,000.00 towards the costs of the Council's Office and Records Inspection, and pay enforcement expenses to the Council in the amount of \$1,000.00.

### **Donna Elaine Moore Donald Glenn Moore**

**ISSUE:** Donna Elaine Moore and Donna Moore Personal Real Estate Corporation, 621104 B.C. Ltd. dba Homelife Benchmark Titus Realty, Surrey, while licensed as Donna Elaine Moore, representative, 621104 B.C. Ltd. dba Homelife Benchmark Titus Realty, Surrey, entered into a Consent Order with the Council that she committed professional misconduct within the meaning of section 35(1)(d) of the *Real Estate Services Act*, in that: (a) in relation to a transaction: (i) she failed, contrary to section 3-3(1)(a) of the Council Rules, to act in the best interests of her clients and, contrary to section 3-4 of the Council Rules, to act with reasonable care in that she signed the MLS® Listing Contract Amendment Forms with semblances of the clients' signatures without their authorization; (ii) acted outside the scope of her authority given by her clients, contrary to section 3-3(1)(c) of the Council Rules, by causing the listing price for the Adair property to be reduced on January 10, 2008 and February 4, 2008; (iii) she failed contrary to section 5-3(1) of the Council Rules, to obtain written authorization from her clients to sign MLS® Listing Contract Amendment Forms on their behalf; (iv) she failed contrary to section 3-4 of the Council Rules, to act with reasonable care and skill by failing to keep her clients apprised of price changes on the MLS List-

ing for the Property; (b) in relation to several transactions, she failed, contrary to section 5-3(1) of the Council Rules, to obtain written authorization from the clients involved in those transactions to sign certain documents on their behalf; (c) in relation to two transactions, she failed, contrary to section 5-9(1)(a) of the Council Rules, to complete the requirements for written disclosure of her interest in the trade, which was the subject of the contract, in accordance with section 5-9 of the Council Rules; (d) in relation to several transactions, she failed, contrary to section 3-3(1)(d) of the Council Rules, to advise the clients involved in those transactions to seek independent legal advice when the deposit for the units being purchased by them was to be held by the sellers' solicitors, someone other than the brokerage; (e) in relation to four transactions, she failed, contrary to section 27(1)(a) of the *Real Estate Services Act*, to promptly deposit cheques that she received from the buyers involved in those transactions into the trust account of the brokerage, but rather left the deposit cheque with the developer to forward to the developer's solicitors; (f) in relation to several transactions, she failed, contrary to section 3-4 of the Council Rules, to act with reasonable care and skill in that she completed the Disclosure of Remuneration forms related to those transactions identifying Lighthouse Realty Ltd. as her brokerage, when in fact Lighthouse Realty Ltd. was the brokerage representing the seller; (g) in relation to two transactions, she failed, contrary to section 5-11(1)(a) of the Council Rules, to disclose to the clients involved in those transactions the remuneration she would be receiving in connection with the transaction; and (h) in relation to a transaction, she failed, contrary to section 35(1)(d) of the *Real Estate Services Act* and section 3-3(1)(i) of the Council Rules, to take reasonable steps to avoid a conflict of interest and, contrary to section 3-3(1)(j) of the Council Rules, to promptly and fully disclose a conflict of interest arising from her provision of a gift of \$69,000 for use as a part of the down payment for the purchase of a Hyland Road property.

**ISSUE:** Donald Glenn Moore, representative, 621104 B.C. Ltd. dba Homelife

Benchmark Titus Realty, Surrey, entered into a Consent Order with the Council that he committed professional misconduct within the meaning of section 35(1)(d) of the *Real Estate Services Act*, in that in relation to three transactions, he failed, contrary to section 5-9(1)(a) of the Council Rules, to provide disclosure to the parties involved in those transactions of his interest in the trade in the form required by the Council, of some or all of the information required by section 5-9(5) of the Council Rules.

**RESULT:** Donna Elaine Moore was suspended for one hundred and fifty (150) days from June 22, 2011 to November 18, 2011 (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.

**RESULT:** Donald Glenn Moore was suspended for twenty-one (21) days from May 25, 2011 to June 14, 2011 (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.

### **Sandeep (Sanford) Singh Manhas**

**ISSUE:** Sandeep (Sanford) Singh Manhas, currently unlicensed, entered into a Consent Order with the Council in which he consented to an Order that, while licensed as a representative with Coast Realty Group Ltd., Nanaimo, he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he: (a) contravened section 35(1)(c) of the *Real Estate Services Act* while representing the buyer in connection with the purchase of the property in that he represented to the sellers that the buyer intended to purchase the property for use as her principal residence to induce the sellers to agree to the sale of the property, although he knew the buyer intended to re-sell the property; (b) contravened section 35(1)(a) and (d) of the *Real Estate Services Act*, or one or both of them, in that he: (i) failed to secure a separate written agreement that the deposit relating to the purchase and sale of the

## Disciplinary Decisions, *cont'd*

property would be held by someone other than his brokerage, contrary to section 27(4) of the *Real Estate Services Act*; (ii) failed to promptly provide his managing broker with a copy of the contract, contrary to section 3-2(1)(b) of the Council Rules; (iii) failed to inform his managing broker about the services he was providing with respect to the property, contrary to section 3-2(2)(a) of the Council Rules; and (iv) failed to disclose the nature of the representation he would be providing to each party in the purchase and sale of the property, contrary to section 5-10 of the Council Rules.

**RESULT:** Sandeep (Sanford) Singh Manhas was suspended for fifty (50) days from May 4, 2011 to June 22, 2011 (inclusive), and was ordered to pay a discipline penalty to the Council in the amount of \$2,500.00, 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, and to pay enforcement expenses to the Council in the amount of \$1,000.00.

### Wilbur Bernard Roshinsky

**ISSUE:** Wilbur Bernard Roshinsky, representative, Royal Pacific Realty (Kingsway) Ltd., Vancouver, entered into a Consent Order with the Council that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by: (a) acting as a limited dual agent when he ought to have known that his client required principal and agent representation; (b) failing to ensure that his client received appropriate legal advice or provided an appropriate waiver before entering into contracts that appeared to favour the developer over his client's, both as to price and terms; and (c) failing to act in the best interest of his client, contrary to section 3-3(1)(a) of the Council Rules, by failing to incorporate into the contracts an agreed-upon term permitting his client to rescind or cancel the transactions.

**RESULT:** Wilbur Bernard Roshinsky was suspended for thirty (30) days from June 1, 2011 to June 30, 2011 (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.

### Surinder (Saira) Kaur Aujla

**ISSUE:** Surinder (Saira) Kaur Aujla, representative, Fraseridge Realty Ltd. dba Amex-Fraseridge Realty, Vancouver, entered into a Consent Order with the Council that she committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that she: (a) contravened sections 5-14(1)(a) and (b) of the Council Rules in that she entered into the Exclusive Listing Contract with the seller wherein the payment of the remuneration was based on the difference between the price at which the said property was listed for sale and the actual price for which the property was sold; (b) contravened sections 5-1(3)(b) and 5-4(4)(f) of the Council Rules in that she failed to enter the listing price of the property and the amount of the remuneration with respect to the sale of the property on the Exclusive Listing Contract; (c) contravened sections 3-4 and 3-3(1)(c) of the Council Rules in that she failed to act honestly and acted outside the scope of authority of her client, the seller, by advising a potential buyer that the price of the property was \$2.8 million when she knew that the seller was asking \$2.5 million; and (d) contravened section 5-11(2) of the Council Rules in that she failed to disclose to the buyer and to her related brokerage the source of the remuneration, the amount of the remuneration, or the method of calculation of the remuneration.

**RESULT:** Surinder (Saira) Kaur Aujla was suspended for twenty-one (21) days from June 15, 2011 to July 5, 2011 (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.

### Maureen Gayle Chester

**ISSUE:** Maureen Gayle Chester, currently unlicensed, entered into a Consent Order

with the Council that, while licensed as a representative with Century 21 Executives Realty Ltd., Vernon, she committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in relation to a Contract of Purchase and Sale for property on Saddleview Ave., Lumby, B.C. she: (a) contravened section 7(3)(a) of the *Real Estate Services Act* by providing real estate services separate from her brokerage; (b) contravened section 27(1)(a) of the *Real Estate Services Act* by failing to deliver funds received from the buyer to the brokerage; (c) contravened section 5-9(3)(b) of the Council Rules by failing to make a Disclosure of Interest in Trade to the buyer, in that the seller was her spouse, and she had a registered Certificate of Pending Litigation against the subject property; (d) contravened section 5-10 of the Council Rules by failing to disclose the nature of the representation she was providing to both the buyer and the seller; (e) contravened section 3-3(1)(d) of the Council Rules by failing to advise the buyers to seek independent legal advice with respect to the Contract of Purchase and Sale, including, but not limited to, the implications arising from their agreement to be bound by a legal separation agreement between Ms. Chester and her spouse, the seller, to which the buyers were not a party; (f) 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; (g) contravened section 3-3(1)(i) of the Council Rules by failing to take steps to avoid a conflict of interest in the transaction; and (h) contravened section 3-4 of the Council Rules by failing to act with reasonable care and skill when she drafted a Contract of Purchase and Sale without a completion date, and with vague terms with respect to an agreement for sale, which could render the contract unenforceable.

**RESULT:** Maureen Gayle Chester was suspended for fourteen (14) days upon licence reissuance, 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. The suspension period would normally be longer but for the fact that Ms. Chester

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## Disciplinary Decisions, *cont'd*

voluntarily turned in her real estate licence and has remained unlicensed since January 12, 2011.

### David Raymond Hale

**ISSUE:** David Raymond Hale, representative, Pemberton Holmes Ltd., Victoria, entered into a Consent Order with the Council that, while licensed as a representative with RK Realty Ltd. dba Keller Williams Realty West, Brentwood Bay, he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he: (a) provided real estate services through an individual who was not licensed with the brokerage, contrary to section 6-1 of the Council Rules; and (b) failed to act in the best interest of his clients in that he knew, or should have known, that D.G. was marketing the brokerage's listings under an unlicensed entity, contrary to section 3-3(1)(a) of the Council Rules.

**RESULT:** David Raymond Hale was suspended for fourteen (14) days from June 1, 2011 to June 14, 2011 (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.

### Sada Nand Maharaj Yunas Hussain Mohammed

**ISSUE:** Sada Nand Maharaj, representative, OMAX Realty Ltd., Delta, entered into a Consent Order with the Council that, while licensed as a representative with Century 21 Coastal Realty, Surrey, he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that, contrary to section 3-4 of the Council Rules, he permitted Mr. Mohammed to use his computer at Century 21 Coastal Realty.

**ISSUE:** Yunas Hussain Mohammed, representative, OMAX Realty Ltd., Delta, entered into a Consent Order with the Council that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that: (a) contrary to section 7(3)(a) of

the *Real Estate Services Act*, he provided real estate services in relation to property other than on behalf of his brokerage, OMAX, in that his name and telephone number appeared on the MLS® link as the person and telephone number to contact for appointments to view the property; (b) contrary to section 7(3)(a) of the *Real Estate Services Act*, he provided real estate services in relation to the property other than on behalf of his brokerage, OMAX, in that he drafted the contract; and (c) contrary to section 7(3)(a) of the *Real Estate Services Act*, he provided real estate services in relation to the property other than on behalf of his brokerage, OMAX, in that he provided trading services directly to one or more than one of the seller and the buyer.

**RESULT:** Sada Nand Maharaj was suspended reprimanded and was ordered to successfully complete the Trading Services Remedial Education Course.

**RESULT:** Yunas Hussain Mohammed was suspended for seven (7) days from July 6, 2011 to July 12, 2011 (inclusive) and was ordered to successfully complete the Trading Services Remedial Course.

**RESULT:** Sada Nand Maharaj and Yunas Hussain Mohammed were ordered to be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,000.00.

### William Nettleton Thompson

**ISSUE:** William Nettleton Thompson, representative, Broadway West Realty Ltd. dba Amex Broadway West Realty, Vancouver, entered into a Consent Order with the Council that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he: (a) failed to use reasonable care and skill in that, while representing the seller in connection with the listing and sale of the property, he advertised the property on the Multiple Listing Service® as having "Two Legal Living Accommodations" without having first obtained confirmation from the city that the suite complied with all applicable legal requirements, contrary to section 3-4 of the Council Rules; and (b)

failed to provide the contract promptly to his managing broker in that he failed to submit the contract to his brokerage until around May 19, 2009, contrary to section 3-2(1)(b) of the Council Rules.

**RESULT:** William Nettleton Thompson was suspended for seven (7) days from June 1, 2011 to June 7, 2011 (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.

### Jasvir (Jazz) Singh Sohal

**ISSUE:** Jasvir (Jazz) Singh Sohal, representative, Century 21 Harbour Realty Ltd., Nanaimo, entered into a Consent Order with the Council that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that, while acting on behalf of a buyer in the purchase of property by way of a Contract of Purchase and Sale dated April 9, 2010, he: (a) contrary to section 3-2(1)(a) of the Council Rules, failed to promptly provide to his managing broker all general records and trading records relating to the buyer's acquisition of the property, including the contract; and (b) contrary to section 3-2(2) of the Council Rules, failed to immediately notify his managing broker that the initial deposit of \$1,000.00 had not been received from the buyer within 48 hours of acceptance.

**RESULT:** Jasvir (Jazz) Singh Sohal was suspended for seven (7) days from July 6, 2011 to July 12, 2011 (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.

### Graeme Julian Erickson

**ISSUE:** Graeme Julian Erickson, associate broker, Macdonald Realty Ltd. dba Macdonald Realty, Vancouver, entered into a Consent Order with the Council that, while licensed as an associate broker with Macdonald Commercial Real

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## Disciplinary Decisions, *cont'd*

Estate Services Ltd., Vancouver, he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by failing to act in the best interest of his client, the seller, by failing to ascertain or make reasonable efforts to ascertain that the property did not include a storage locker, or use of a storage locker, before he listed the property for sale, contrary to section 35(1)(d) of the *Real Estate Services Act* and sections 3-3(1)(h) and 3-4 of the Council Rules.

**RESULT:** Graeme Julian Erickson was suspended for seven (7) days from June 15, 2011 to June 21, 2011 (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.

### Wing Kut Chiu

**ISSUE:** Wing Kut Chiu, representative, Magsen Realty Inc. (Rhmd), Richmond, entered into a Consent Order with the Council that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he: (a) contravened section 35(1)(g) of the *Real Estate Services Act* by confirming he had completed the course requirements of the Council's Re-Licensing Education Program prior to the expiration of his licence, when he had not completed the course requirements; and (b) contravened section 2-8.1 of the Council Rules by failing to complete the course requirements of the Council's Re-Licensing Education Program prior to the expiration of his licence and prior to submitting his application to the Council for renewal of his licence.

**RESULT:** Wing Kut Chiu 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.

### Colleen Adele Guiney

**ISSUE:** Colleen Adele Guiney, currently unlicensed, while licensed as a represen-

tative, Pemberton Holmes Ltd. (SkeHat), 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 she: (a) confirmed she had completed the course requirements of the Council's Re-Licensing Education Program when she 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 her licence renewal, contrary to section 2-8.1 of the Council Rules.

**RESULT:** Colleen Adele Guiney was reprimanded, and, as a condition of re-licensing, she 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.

### John David McCarthy Re/Max Invermere

**ISSUE:** High Country Realty Ltd. dba Re/Max Invermere, Invermere, entered into a Consent Order with the Council in which it consented to an Order that it committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening section 7-7(1)(b) of the Council Rules in that it failed to file an Accountant's Report with the Council by the prescribed date.

**ISSUE:** John David McCarthy, managing broker, High Country Realty Ltd. dba Re/Max Invermere, Invermere, 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* by not fulfilling his responsibilities as managing broker for the performance of the duties imposed on the brokerage by its licence within the meaning of section 6(2)(b) of the *Real Estate Services Act* and by contravening section 3-1(1)(a) and (b) and 3-1(3) of the Council Rules in that he failed to ensure that the said Account-

tant's Report was filed with the Council by the prescribed date.

**RESULT:** Re/Max Invermere was reprimanded.

**RESULT:** John David McCarthy was reprimanded.

**RESULT:** Further, Re/Max Invermere and John David McCarthy were jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,000.00.

### Reginald Derek Mumford

**ISSUE:** Reginald Derek Mumford, currently unlicensed, entered into a Consent Order with the Council that, while licensed as managing broker, RK Realty Ltd. dba Keller Williams Realty West, Brentwood Bay, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he permitted the brokerage to provide real estate services through a non-licensed entity and through an individual who was not licensed, when he should have known that the unlicensed person was acting as an agent in the marketing of the brokerage's mobile home listings, contrary to section 7(5)(a) of the *Real Estate Services Act*.

**RESULT:** Reginald Derek Mumford 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.

### Charles Alexander Cameron Charlie Cameron Personal Real Estate Corporation

**ISSUE:** Charles Alexander Cameron and Charlie Cameron Personal Real Estate Corporation, West Coast Realty Ltd. dba Sutton Group-West Coast Realty, North Vancouver, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* while acting as a representative for prospective buyers of property on Timberline Road, Earl's Cove, BC and listed

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## Disciplinary Decisions, *cont'd*

by a licensee with Sussex Group – S.R.C. Realty Corporation (MadPk) dba Prudential Sussex Realty (MadPk), in that he failed to obtain the owners' consent through the listing agent to allow the buyers to access the keys to the property and the property itself without the listing agent being present, contrary to section 3-4 of the Council Rules and section 35(1)(a) of the *Real Estate Services Act*.

**RESULT:** Charles Alexander Cameron and Charlie Cameron Personal Real Estate Corporation were both reprimanded. Further, Charles Alexander Cameron was ordered to successfully complete the Trading Services Remedial Education Course and Charles Alexander Cameron and Charlie Cameron Personal Real Estate Corporation were ordered to be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,000.00.

### Gary Edward Brown

**ISSUE:** Gary Edward Brown, managing broker, Maibro Smartmove Realty Inc. dba SmartMove Real Estate, Victoria, entered into a Consent Order with the Council that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he: (a) contravened section 3-1(4)(a) of the Council Rules in that he failed to ensure that parties to the said Contract of Purchase and Sale were immediately notified in writing that the \$5,000.00 deposit was not received in accordance with the terms of the said contract; and (b) contravened section 3-4 of the Council Rules in that he failed to ensure that the said contract specified that the said deposit was due on the removal of the subject clauses.

**RESULT:** Gary Edward Brown 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.

### Alex Yuk Chong Lam

**ISSUE:** Alex Yuk Chong Lam, representative, West Coast Realty Ltd. (VanCam)

dba Sutton Group-West Coast Realty (VanCam), Vancouver, entered into a Consent Order with the Council that, while licensed as a representative with Royal Pacific Realty Ltd., Vancouver, he committed professional misconduct within the meaning of section 35(1) of the *Real Estate Services Act* by failing to notify the managing broker when the deposit payable under the contract was not received, contrary to section 3-2(2)(b) of the Council Rules.

**RESULT:** Alex Yuk Chong Lam 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.

### Kevin Alfred Pearson

**ISSUE:** Kevin Alfred Pearson, managing broker, Energy Realty Ltd. dba Century 21 Energy Realty, Fort St. John, entered into a Consent Order with the Council that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he failed to disclose his interest in the property in writing to the buyer on a Disclosure of Interest in Trade form, prior to entering into a Contract of Purchase and Sale, contrary to section 5-9 of the Council Rules.

**RESULT:** Kevin Alfred Pearson 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.

### Zi Ya (Layla) Yang Layla Z.Y. Personal Real Estate Corporation

**ISSUE:** Zi Ya (Layla) Yang and Layla Z.Y. Personal Real Estate Corporation, Seafair Realty Ltd. dba Sutton Group Seafair Realty, Richmond, entered into a Consent Order with the Council that she, while licensed as Zi Ya (Layla) Yang, representative, Seafair Realty Ltd. dba Sutton Group Seafair Realty, Richmond, committed professional misconduct

within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that she: (a) contravened section 3(1) of the *Real Estate Services Act* in that she provided rental property management services on behalf of the said sellers, while she was not licensed to provide such services, when she collected \$2,000.00 in rent from the tenants in the said property in June 2009; (b) contravened section 7(3)(a) of the *Real Estate Services Act* in that she provided unlicensed rental property management services as referred to in (a) in relation to the said property, outside of her brokerage; (c) contravened section 27(1)(a) of the *Real Estate Services Act* in that she failed to promptly pay or deliver the \$2,000.00 collected on behalf of the said sellers to her brokerage for deposit into the trust account of the said brokerage; and (d) contravened section 3-3(1)(c) of the Council Rules in that she acted outside of the scope of her authority given to her by the said sellers when, without the sellers' written authorization, she refunded one of the tenants rent in the amount of \$133.00.

**RESULT:** Zi Ya (Layla) Yang 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.

### Rental Property Management Services

#### Robert Christopher Stepchuk Fort Park Property Management

**ISSUE:** Fort Park Real Estate Inc. dba Fort Park Property Management, Vancouver, entered into a Consent Order with the Council in which it consented to an Order that it committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening section 7-7(1)(b) of the Council Rules in that it failed to file an Accountant's Report with the Council by the prescribed date.

**ISSUE:** Robert Christopher Stepchuk, managing broker, Fort Park Real Estate Inc. dba Fort Park Property Management,

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## Disciplinary Decisions, *cont'd*

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* by not fulfilling his responsibilities as managing broker for the performance of the duties imposed on the brokerage by its licence within the meaning of section 6(2)(b) of the *Real Estate Services Act* and by contravening section 3-1(1)(a) and (b) and 3-1(3) of the Council Rules in that he failed to ensure that the said Accountant's Report was filed with the Council by the prescribed date.

**RESULT:** Fort Park Property Management was reprimanded.

**RESULT:** Robert Christopher Stepchuk was reprimanded.

**RESULT:** Further, Fort Park Property Management and Robert Christopher Stepchuk were jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,000.00.

### **Shannon Dee Chancellor Century 21 Lifestyles**

**ISSUE:** Shannon Dee Chancellor, representative, Century 21 Lakeside Realty Ltd., Sorrento, entered into a Consent Order with the Council that, while licensed as a representative with National Home Owner Marketing Inc. dba Century 21 Lifestyles, Salmon Arm, she committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that, as a rental property manager while providing rental property management service to the owner of a rental property, she failed to provide rental property management services with reasonable care and skill when she failed to promptly account or pay over to the owner net rental income of \$40.42 held by the brokerage relating to the months of on or about November 2008 and December 2008, contrary to sections 3-3(1)(a) and 3-4 of the Council Rules.

**ISSUE:** National Home Owner Marketing Inc. dba Century 21 Lifestyles, Salmon Arm, entered into a Consent Order with the Council that it com-

mitted professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that it failed to provide rental property management services with reasonable care and skill when it failed to promptly account or pay over to the owner net rental income of \$40.42 held by the brokerage in relating to the months of on or about November 2008 and December 2008, contrary to section 3-3(1)(a) and 3-4 of the Council Rules.

**RESULT:** Shannon Dee Chancellor was reprimanded.

**RESULT:** Century 21 Lifestyles was reprimanded and ordered to pay enforcement expenses to the Council in the amount of \$1,000.00.

### **Bruce Irving Ward Bruce Ward Realty Ltd.**

**ISSUE:** Bruce Irving Ward, managing broker, Bruce Ward Realty Ltd., Vancouver, entered into a Consent Order with the Council that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he: (a) failed to act in the best interests of his property management clients and failed to use reasonable care and skill, in that he did not provide the clients with a definitive termination date for the agreement, contrary to one or more than one of sections 3-3(1)(a) and 3-4 of the Council Rules; (b) failed to act within the scope of authority given by his clients, in that he permitted the brokerage to charge the clients a fee in addition to an insurance premium paid by the brokerage on behalf of the clients, contrary to section 3-3(1)(c) of the Council Rules; (c) failed to have a description of the services to be provided by the brokerage, in that he failed to ensure that the agreement between the brokerage and the clients included a provision describing the insurance services to be provided by the brokerage, contrary to section 5-1(4)(e) of the Council Rules; and (d) failed to provide in the agreement for the remuneration and the circumstances under which the remuneration would be payable, in that he failed to ensure that the agreement between the broker-

age and the clients contained provisions for remuneration for insurance services and the circumstances under which the remunerations would be payable, contrary to section 5-1(4)(f) of the Council Rules.

**ISSUE:** Bruce Ward Realty Ltd., Vancouver, entered into a Consent Order with the Council that it committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that it: (a) failed to act in the best interests of the property management clients and failed to use reasonable care and skill, in that the brokerage did not provide the clients with a definitive termination date for the agreement, contrary to one or more than one of sections 3-3(1)(a) and 3-4 of the Council Rules; (b) failed to act within the scope of authority given by the clients, in that the brokerage charged the clients a fee in addition to the insurance premium paid by the brokerage on behalf of the clients, contrary to section 3-3(1)(c) of the Council Rules; (c) failed to have a description of the services to be provided by the brokerage, in that the agreement between the brokerage and the clients did not include a provision describing the insurance services to be provided by the brokerage, contrary to section 5-1(4)(e) of the Council Rules; and (d) failed to provide in the agreement for the remuneration and the circumstances under which the remuneration would be payable, in that the agreement between the brokerage and the clients did not contain provisions for remuneration for insurance services and the circumstances under which that remuneration would be payable, contrary to section 5-1(4)(f) of the Council Rules.

**RESULT:** Bruce Irving Ward was reprimanded and was ordered to successfully complete the Trading Services Remedial Education Course.

**RESULT:** Bruce Ward Realty Ltd. was reprimanded.

**RESULT:** Bruce Irving Ward and Bruce Ward Realty Ltd. were ordered to be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,000.00.

## Disciplinary Decisions, *cont'd*

### Strata Management Services

#### David John Hensman Teamwork Property Management Ltd.

**ISSUE:** Teamwork Property Management Ltd., Abbotsford, entered into a Consent Order with the Council that it committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that it: (a) contravened section 27(2)(b) of the *Real Estate Services Act* by transferring lump sum strata management fees, part of which were earned by the brokerage and part of which were earned by the strata management licensees providing strata management services, directly from the operating trust account maintained for each of 13 strata corporations into the brokerage general operating account, rather than transferring the share for the licensees directly into the brokerage operating trust account and then paying the licensees' share from the brokerage operating trust account; (b) contravened section 30(1)(g) of the *Real Estate Services Act* in that it transferred lump sum funds from the trust account maintained for the said strata corporations to the brokerage general operating account as strata management and administration fees which exceeded the actual amount of the

brokerage fees earned, thereby causing the said trust account to become in an overdraft position; and (c) contravened section 7-5(1)(a), 7-5(1)(b) and 7-5(3) of the Council Rules between January 1, 2009 and May 31, 2009 in that brokerage's trust account ledger was in an overdraft position and steps were not taken to eliminate the negative balance and to notify the Council of the negative balance within 10 days of the negative balance arising.

**ISSUE:** David John Hensman, managing broker, Teamwork Property Management Ltd., Abbotsford, entered into a Consent Order with the Council that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he contravened section 3-1(3)(a) of the Council Rules between January 1, 2009 and June 30, 2009 by failing to ensure the brokerage's trust account was maintained in accordance with the Act, regulations, rules and bylaws: (a) when he transferred, or allowed to be transferred lump sum strata management fees, part of which were earned by the brokerage and part of which were earned by strata management licensees providing strata management services, directly from the operating trust account maintained for each of 13 strata corporations into the brokerage

general operating account rather than transferring the share for the licensees directly into the brokerage operating trust account and then paying the licensees' share from the brokerage operating trust account; and (b) when he permitted the brokerage to transfer lump sum funds from the trust account maintained for the said strata corporations to the brokerage general operating account as strata management and administration fees that exceeded the actual amount of the brokerage fees earned, thereby causing the said trust account to become in an overdraft position.

**RESULT:** Teamwork Property Management Ltd. was reprimanded.

**RESULT:** David John Hensman was reprimanded and was ordered to successfully complete the disciplinary education assignments applicable to Chapter 2 (Mandatory Requirements under *The Real Estate Services Act*) of the Broker's Licensing Course.

**RESULT:** Teamwork Property Management Ltd. and David John Hensman were ordered to be jointly and severally liable to pay a discipline penalty to the Council in the amount of \$2,500.00 and to pay enforcement expenses to the Council in the amount of \$1,000.00. ■

## Feedback?

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

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

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

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