

Report from Council

A Warning About Fraudulent Practices

Licenseses will note from this newsletter that a licensee recently had his licence suspended under section 45 of the *Real Estate Services Act* for misappropriation of trust money. Licensees are warned not to structure transactions that cause trust money to be fraudulently withdrawn, misappropriated or wrongfully converted from trust accounts. This is a very serious contravention of the *Real Estate Services Act* and will result in immediate licence suspension.

In addition, the Council reminds licensees that real estate transactions must not be structured to mislead mortgage lenders as to the amount of equity (if any) being provided by buyers. This is fraud. Licensees who participate are subject to a wide range of penalties.

Fraud includes contracts that state that some amount of money is to be paid directly to the seller to finish a basement when the basement is already finished and the seller never receives these funds; gift letters from family members where no gift funds are ever paid over; or a separate addendum to the contract crediting back funds to the buyer. The implications of a licensee participating in these types of deceptions are serious.

Do not confuse acting in the best interest of clients with facilitating fraudulent mortgage applications.

Listing agents must ensure that the Contract of Purchase and Sale spells out the proposed equity and financing being sought, in order to protect the interests of the seller. This may involve rewriting the financing section of the contract. All applicable financial information must be contained within the same contract. "Altered" Contracts of Purchase and Sale, which seek to mislead a lender and a seller, are fraudulent and can be deemed criminal.

Duty to Report Illegal Activities

Occasionally, licensees will come across a situation where a property they have listed for sale, or are providing rental property or strata management services for, is being used for illegal purposes (e.g., a marijuana growing operation, fraud with respect to a new home, and the application of the GST or HST). The general rule is that no citizen has an obligation to report to the authorities an activity which may appear to them to be illegal. Exceptions to this general rule include the obligation to report to the authorities a child in need of protection and the requirements under the provisions of the federal *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.

While this general rule would apply to licensees, they must be careful not to



appear to be aiding or abetting the carrying on of the illegal activity. Aiding and abetting is a criminal offence if a person does or omits to do something with the purpose of aiding another person to commit an offence, and there is a guilty intent behind the action or omission. There would be no guilty intent if a licensee, having observed the illegal activity, walked away from it because he or she did not want to become involved.

Guilty intent may, however, be implied if a licensee, knowing of the illegal use, promotes that use as if it were not illegal. For example, the Council has previously advised licensees that they are to avoid advertising illegal suites as a possible source of revenue for homeowners.

The same principle applies to the situation where a builder claims that no HST or GST is payable on a new home and a licensee knows this is not true. Licensees must be cautious not to knowingly

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A Note from the Chair



Bryon Brandle,
Chair

On June 30, 2012, 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 Yale.

Serving as Council Chair has been extremely rewarding. 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 page and they have my most sincere thanks for their service and dedication to the Council.

On July 1st, the Council welcomes newly elected member David Rishel of Abbotsford. We also welcome back re-elected members William (Bill) Binnie, Marshall Cowe, Subhadra Ghose, Susan McGougan and William (Bill) Phillips.

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

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make a false or fraudulent statement in advertising or representations to buyers. Do not advertise "No GST" if you know or suspect otherwise.

All licensees have the obligation to advise their clients of all known material information. Therefore, if licensees discover

- The British Columbia Real Estate Association and its member boards/associations and, in particular, President Rick Valouche 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.
- Council Vice-Chair Michael Ziegler 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;

Finally, I would be remiss if I did not thank the Council staff for their assistance during my year as Chair.

Bryon Brandle
Chair

that a property that they are managing or offering for sale is being used to grow an illegal cash crop, they are obligated to advise the owner.

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

Office Closures

The Council office will be closed on **Monday, July 2, 2012** for Canada Day and **Monday, August 6, 2012** for BC Day.

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Real Estate Council of BC
CHAIR—Bryon R. Brandle
VICE-CHAIR—R.E. Michael Ziegler
EXECUTIVE OFFICER—Robert O. Fawcett

COUNCIL MEMBERS

Barbara Barry
William R. Binnie
J. Garth Cambrey
Marshall J. Cowe
Subhadra Ghose
Abdul R. Ghouri
Marylou Leslie
Susan Lynch
Gerry Martin
Susan McGougan
John J. Nagy
Patrick O'Donnell
William B. Phillips
Bruce Turner

STATISTICS

June 2012

Representatives: 17,915
Associate Brokers: 1,688
Managing Brokers: 1,312
Total Licensees: 20,963
Brokerages (including branch offices
and sole proprietors): 1,431

Role of the Council

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

Report from Council

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

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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, 2012.

New Council Member

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

- David Rishel, Re/Max Little Oak, Abbotsford (licensed for 26 years)

Re-elected Council Members

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

- William (Bill) Binnie, Royal LePage Northshore, West Vancouver (licensed for 37 years)
- William (Bill) Phillips, Whistler Real Estate Company Limited, Whistler (licensed for 37 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 21 years)

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

- Susan McGougan, Re/Max of Nanaimo, Nanaimo (licensed for 21 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 40 years)

The following Council members have a further year to serve

All Districts – Rental Property/Strata Management Member

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

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

- Patrick J. O'Donnell, Prudential Sussex Realty, West Vancouver (licensed for 28 years)

District #1 – County of Vancouver (representative member)

- Abdul R. Ghouri, Royal Pacific Realty (Kingsway) Ltd., Vancouver (licensed for 28 years)

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

- Michael Ziegler, Newport Realty Ltd., Victoria (licensed for 36 years)

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

- Marylou Leslie, Re/Max Performance Realty, Delta (licensed for 22 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 24 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 28 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

Gerry Martin, BC Farm and Ranch, Abbotsford, after six years of service. ■

Designated Agency Update

The Council emailed a designated agency update to all trading services licensees on May 10th. That update described the collaborative approach taken by the Council and the industry, the pilot project that had taken place in the Victoria market area beginning on January 1, 2012, the education sessions that were being provided throughout the province in April and May, and the intended implementation of designated agency, throughout the province by the British Columbia

Real Estate Association and its member boards, on June 1st. Here is a link to that update: www.recbc.ca/2012/05/designated-agency-update/

Updates to information published in both the Professional Standards Manual and the Brokerage Standards Manual reflecting designated agency will be made available to licensees in the fall. The Council will also be consulting with licensees in September, after licensees

have had the opportunity to practice designated agency, on changes to the Council Rules which will clarify how obligations under the *Real Estate Services Act* relate to designated agency.

The Council encourages licensees who provide trading services to visit <http://web.bcrea.bc.ca/da/>, BCREA's designated agency website, which includes extensive information related to the practice of designated agency. ■

Council Strategic Plan Update

In January 2012, the Real Estate Council of BC approved a new strategic plan. The plan contains 20 tasks, projects or strategic initiatives under the goal areas of Governance, Stakeholder Communications, Education & Training, Discipline, and Efficiency & Responsive Services. Currently, the more immediate tasks have been completed and other more far-reaching initiatives are in the planning stages.

Under the goal area of Governance, the Council staff has reviewed the time commitment required by Council Members and taken steps, approved by the Council, to reduce the time individual Council Members are required to devote to Council business. Among the changes made, the Council has reduced the number of Council meetings from eight to seven and reduced the number of Council committees in favour of striking more advisory groups with representation from the licensees and industry professionals engaged in those practice areas. An annual planning session has been added to ensure strategic planning initiatives are monitored.

Stakeholder Communications initiatives involving surveys of licensees and real estate consumers will be undertaken, along with focus groups to provide input on current issues in the real estate industry.

Education & Training initiatives include the revision of the Applied Practice Course, a revised Broker's Course, potential revisions to strata management training, and consideration of a Broker's Applied Practice Course.

Discipline initiatives include a review of fines and suspensions currently levied by the Council as compared to other Canadian real estate regulators and other BC regulated professions. In addition,



The more immediate tasks have been completed and other more far-reaching initiatives are in the planning stages.

the Council will be reviewing the Real Estate Council of Alberta's approach to Alternative Dispute Resolution. Licensee seminars on the top ten most prominent trading services complaints will be added to the existing top ten strata complaints seminars that have been underway throughout the province in 2012.

In the area of Efficiency & Responsive Services, a number of IT projects are planned or are currently underway. The *Report from Council* newsletter will continue to be available in printed format

but the PDF version will be transitioned to a new more dynamic online format. It is expected that a major upgrade to the Council's records management system, including elements of electronic records management, will be implemented in 2013, along with a new online licence renewal and payment module.

Implementation of the strategic plan will be ongoing for the next few years and the Council is committed to implementing all of the initiatives in a timely and cost effective manner. ■

Strata Management Activities and the *Legal Profession Act*

Licenses are often asked to or are sometimes expected by their strata corporation clients to provide services which may be outside of their professional scope of expertise. These activities may include representing strata councils in court proceedings, such as small claims court actions, drafting of resolutions, strata bylaws or bylaw amendments for consideration at general meetings, and preparing and executing Strata Property Regulation forms.

The Council's role is to ensure that licensees are compliant with the provisions of the *Real Estate Services Act* ("RESA"). There are a number of other Acts which may be relevant to the real estate services provided by a licensee under RESA, such as the *Strata Property Act*, the *Residential Tenancy Act*, the *Small Claims Act*, and the *Legal Profession Act*. Section 3-4 of the Council Rules provides that a licensee must be competent to provide the services for which he or she is licensed and, therefore, is expected to be familiar with other legislation. Section 3-3(1)(d) of the Council Rules provides that a licensee must advise the client to seek independent professional advice on matters outside of the expertise of the licensee.

With respect to the *Legal Profession Act* ("LPA"), the Council has, from time to time, dealt with issues arising where the Law Society has investigated the activities of a licensee or where licensees have been found by the Law Society to be in breach of section 15 of the LPA.

Section 15 provides that no person other than a practicing lawyer is permitted to engage in the practice of law and section 1 of the LPA proscribes what activities are included in the practice of law, including:

- (a) appearing as counsel or advocate,
- (b) drawing, revising or settling
- (i) a petition, memorandum, notice of articles or articles under the *Business Corporations Act*, or an application, statement, affidavit, minute, resolu-



tion, bylaw or other document relating to the incorporation, registration, organization, reorganization, dissolution or winding up of a corporate body,
(ii) a document for the use in a proceeding, judicial or extrajudicial,
...

(iv) a document relating in any way to a proceeding under a statute of Canada or British Columbia, or

(v) an instrument relating to real or personal estate that is intended, permitted or required to be registered, recorded or filed in a registry or other public office.

In the December 2009 *Report from Council*, the issue of a rental property manager's role in Residential Tenancy Branch Dispute Resolution Hearings was discussed. It was concluded by the Council and confirmed by the Unauthorized Practice Committee of the Law Society of British Columbia that, so long as licensees were acting as the rental property owner's agent pursuant to a written service agreement, they could appear at Residential Tenancy Branch hearings. This was because of the specific definition of "landlord", as contemplated in the *Residential Tenancy Act*, includes the owner's agent.

However, with respect to the *Small Claims Act*, there is no such special language in this Act which would permit a licensee to act for a strata corporation client in

proceedings under that Act. Licensees may, of course, act as witnesses for their clients. Accordingly, licensees who act on behalf of clients in Small Claims Court may find themselves in conflict with the Law Society.

The issue of preparing and executing Strata Property Regulation forms has also been considered by the Council. It was concluded by the Council and confirmed by the Unauthorized Practice Committee that, where the signature of the strata manager is contemplated on the form (e.g. Form G – Certificate of Lien and Form H – Acknowledgment of Payment), strata managers can prepare these forms as part of their general duties so long as they do not charge the client a separate fee for this activity. In this regard, it was suggested that strata managers not charge separately for preparation and execution of these forms as section 1(1) of the LPA specifically provides that activities that would normally fall within the definition of "practice of law" are exempted if they are not "performed for or in the expectation of a fee, gain or reward, direct or indirect, from the person for whom the acts are performed". More information about the filing of liens in relation to the unauthorized practice of law is available at www.recbc.ca/licensee/psm.html#ch4-2_fol (page 220 of the Professional Standards Manual 7th edition).

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Clarification of Driving Prohibition Disclosure Requirements

The Council recently considered the question as to whether the roadside suspension actions being taken in the province related to driving under the influence of alcohol constitute matters which require disclosure to the Council either during the licence renewal application process or during the currency of a licence.

Applications for licensing contain the following question and clarifying note as question 1 of Part E – Information Respecting Reputation and Suitability:

“1. Have you ever been convicted of, or are you **currently charged** with, a criminal or other offence under a federal or provincial enactment, or under the law of any foreign jurisdiction?

*If yes, attach a copy of the offence, date of offence and outcome, even if an absolute or conditional discharge has been granted. Conviction(s) for which you have received a pardon need not be disclosed. Note: Highway traffic offences resulting only in monetary fines or demerit points, or both, and charges initiated by a violation ticket as defined in the Offence Act or by a ticket as defined in the Contraventions Act (Canada), need not be disclosed. **Impaired driving is a Criminal Code offence and must be disclosed.**”*

Section 2-21 of the Council Rules requires that licensees must promptly no-



tify the Council of these same circumstances should they arise during the currency of their licence.

Section 415 of the *Motor Vehicle Act* allows for a driver to be served with a ‘notice of driving prohibition’—often referred to as a ‘roadside suspension’. A recent BC Supreme Court decision found that a notice of driving prohibition does not constitute an offence. The Council is therefore of the view that an applicant for licensing, including a licence renewal, should not be required to disclose having received a notice of driving prohibition. It would naturally follow that this disclosure would not be required, under sec-

tion 2-21 of the Council Rules, during the currency of a licence.

As a result, the following sentence has been added at the end of the clarifying note to question 1, wherever it appears on a licence application or licence renewal application:

“A Notice of Driving Prohibition under section 415 of the Motor Vehicle Act need not be disclosed.”

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

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Licensees may be asked to perform other activities on behalf of clients in relation to requirements under the *Strata Property Act*, such as the drafting of any strata bylaws or bylaw amendments, resolutions particularly with respect to restrictive covenants, creation or cancellation of sections and significant amendments to common or limited common property,

which are intended, permitted or required to be registered at the Land Title Office. With respect to these activities, in accordance with section 3-3(1)(d) of the Council Rules, a licensee must advise their strata corporation client to seek legal advice on the wording of the bylaw, bylaw amendment and/or resolution prior to issuing notice for a general meeting where these matters would be considered.

Brokerages should consider engaging legal services for drafting of resolutions and bylaws that are commonly used by their strata corporation clients.

It is important for licensees to note that the Real Estate Errors and Omissions Insurance Corporation may deny coverage for conduct that is outside the scope of their licence to provide real estate services. ■

Exemptions for Strata Management Services

Strata management services are broadly defined under the *Real Estate Services Act* (RESA) and include exercising the delegated powers and duties of the strata corporation. In most cases, strata council members can be considered to be providing strata management services to their strata corporation. As a result of section 2 of RESA, without an exemption, a licensee who was elected to a strata council would be considered to be providing strata management services and would be required to comply with all aspects of RESA, including holding a licence that permits the licensee to conduct strata management services.

Under section 9-3 of the Council Rules, a licensee may provide strata management services to a maximum of two strata corporations in which the licensee owns a strata lot without the need to comply with RESA, the Real Estate Services Regulation, and the Council Rules, if the licensee:

- discloses in writing to the strata corporation before providing services that the licensee is licensed but is not acting as a licensee, that the licensee is not regulated by RESA, and that the strata corporation is not entitled to the same protections under RESA as are strata corporations that deal with licensees that are not exempted;
- provides a copy of the written disclosure to the managing broker;



Without an exemption, a licensee who was elected to a strata council ... would be required to comply with all aspects of RESA.

- does not have sole signing authority for the withdrawal or expenditure of any strata corporation funds;
- does not receive or expect to receive remuneration for providing the strata management services; and
- promptly delivers to the strata corporation any strata fees, contributions, levies, or other amounts levied by or due to the strata corporation.

Licensees should note that the Council is permitted to take disciplinary action against a licensee who fails to promptly deliver strata corporation funds to the strata corporation.

Section 9-3 of the Council Rules effectively permits a licensee to be elected to the strata council of, or to provide strata management services to, a strata corporation in which the licensee owns a strata lot. The exemption permitted by section 9-3 of the Council Rules is limited to strata management services. As a result, all other activities for which a licence is required, such as the provision of rental property management services or activities related to the purchase and sale of real estate, may not be conducted without complying with RESA. ■

Notice of Licence Suspension

On May 9, 2012, pursuant to section 45 of the *Real Estate Services Act*, the Real Estate Council of British Columbia suspended the real estate licence of **Smrat (Sam) Sharma**, formerly licensed with Multiple

Realty Ltd., Vancouver.

The Real Estate Council suspended his licence in the public interest as a result of Mr. Sharma's misappropriation of trust funds in relation to real estate

transactions. Mr. Sharma is prohibited from providing real estate services to or on behalf of any member of the public as a result of this order. This suspension remains in effect until further notice. ■

Disciplinary Decisions

Since the April 2012 *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

Sameh (Sam) Abdul Emam

ISSUE: Sameh (Sam) Abdul Emam, representative, West Coast Realty Ltd. (Coq) dba Sutton Group–West Coast Realty (Coq), Coquitlam, entered into a Consent Order with the Council that, while licensed with All Points Realty Group Ltd. dba Re/Max All Points Realty, Coquitlam, he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he, while acting as a limited dual agent in the sale of a property from the seller to the buyer by way of an initial January 8, 2007 \$1,780,000 Contract of Purchase and Sale (“First Contract”) as superseded by a \$1,000,000 Contract of Purchase and Sale (“Lawyers’ Contract”) and a disputed \$1,300,000 Contract of Purchase and Sale (“Buyer’s Contract”), which closed on March 30, 2007, he:

(a) failed to clarify the real estate services he would be providing the buyer and failed to obtain the buyer’s informed consent at the outset of his agency relationship with the buyer and, as that relationship progressed through to completion, that he would also be acting for the seller and, as such, his agency and fiduciary obligations to the buyer would be limited in scope, that his services would be supplemented by an active intermediary role of husband of the seller, then licensed with Fraseridge Realty Ltd. dba Amex-Fraseridge Realty, and that the buyer should ensure he received independent legal advice given the husband’s apparent conflict of interest as an intermediary and husband of the seller, contrary to section 35(1)(a) of the *Real Estate Services Act* and sections 3-3(1)(a), (d), (i), and (j), 3-4, 5-1, 5-8(2) and 5-10 of the Council Rules;

(b) failed to act with reasonable care and skill when he allowed the husband to take an active role assisting the buyer in his negotiations regarding fundamental contractual terms and in the preparation and execution of contractual documents, contrary to section 35(1)(a) of the *Real Estate Services Act* and section 3-4 of the Council Rules;

(c) witnessed the purported signature of the buyer on the Limited Dual Agency Agreement and the Disclosure of Remuneration Form, when he did not see the buyer sign the said documents, contrary to section 35(1)(c) of the *Real Estate Services Act* and section 3-4 of the Council Rules;

(d) failed to disclose his remuneration to the buyer in accordance with sections 5-8 and 5-11 of the Council Rules, contrary to section 35(1)(a) of the *Real Estate Services Act* and section 3-3(1)(a), and section 3-4 of the Council Rules;

(e) failed to disclose to the buyer that he would be rebating \$33,907.40 of his commission to the seller, in accordance with sections 3-3(1)(a), 3-3(1)(f), 3-4 and 5-1(6) of the Council Rules, contrary to section 35(1)(c) of the *Real Estate Services Act*;

(f) failed to advise the buyer to seek independent advice regarding the value of the property, especially when he had not conducted an independent assessment of market value, when the First Contract was \$1.127 million more than the stated market value when the property was transferred to the seller less than a year earlier and substantially higher than the BC Assessment, when there had been no improvement or rezoning of the property, and when he relied solely upon the seller’s and the husband’s assessment of value, contrary to section 35(1)(a) of the *Real Estate Services Act* and sections 3-3(1)(a), 3-3(1)(d), 3-3(1)(g), 3-3(1)(h) and 3-4 of the Council Rules;

(g) failed to draft the First Contract with reasonable care and skill and with-

out restricting the generality of the foregoing:

(i) failed to clarify the terms of financing that the buyer required including the maximum principal and interest rate;

(ii) failed to ensure the First Contract and addenda were properly executed;

(iii) failed to ensure that, when he signed his name as witness to contractual documentation, the buyer did indeed sign and he did indeed witness the buyer’s execution of the document as represented; and

(iv) on or about February 22, 2007, failed to ensure a proper and enforceable contract was put into force instead of purporting to revive the expired First Contract by addendum; contrary to section 35(1)(a) of the *Real Estate Services Act* and section 3-4 of the Council Rules;

(h) failed to inform his managing broker that:

(i) he would be rebating \$33,907.40 of the remuneration received from the brokerage to the seller,

(ii) the purchase price under the First Contract had been reduced from \$1,780,000 to \$1,000,000 by way of the Lawyers’ Contract when he became aware of this change prior to closing,

(iii) failed to inform his managing broker and to properly document the manner in which brokerage remuneration would be dealt with in light of the fact he did not reduce the brokerage remuneration from \$49,000 despite the fact that the listing agreement with the seller was a calculation based on 7%/2.5% of the sale price,

in accordance with sections 3-2(2)(a), 3-4 and 5-1(6) and 5-11(2) of the Council Rules, contrary to section 35(1)(a) of the *Real Estate Services Act*;

(i) failed to promptly obtain and provide to his managing broker:

(i) the Lawyers’ Contract when he became aware of the change from the First Contract prior to closing,

(ii) the documentation relating to the increase in remuneration payable by the seller after the parties decreased the sale price under the First Contract, and

Disciplinary Decisions, *cont'd*

(iii) the disclosure of that revised remuneration structure to the buyer, in accordance with sections 3-2(1)(a) and (b), 3-4 and 5-8(2) of the Council Rules, contrary to section 35(1)(a) of the *Real Estate Services Act*.

RESULT: Sameh (Sam) Abdul Emam was suspended for one hundred and twenty (120) days from May 30, 2012 to September 26, 2012 (inclusive), and was ordered to enroll in and attend the first available CPE course “Ethics: Unlocking the REALTOR® Code” and to pay enforcement expenses to the Council in the amount of \$1,000.00.

James Sidney Parsons

ISSUE: James Sidney Parsons, associate broker, Neal & Associates Realty Inc. dba Re/Max Alliance, 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, while acting as a listing agent for the sellers in the listing and sale of property to buyers by way of an August 23, 2010 Contract of Purchase and Sale, he:

(a) created a replacement contract to the contract by signing and initialing the sellers’ signatures and initials without the sellers’ knowledge or consent, contrary to sections 3-3(1)(a), (b), (c), (f), 3-4 and 5-3 of the Council Rules;

(b) represented to the sellers that they themselves knowingly altered the contract by inserting after the parties had executed the contract that the cost of the oil remaining in the tank would be borne by the buyers, when he ought to have known that representation was untrue or misleading or both, contrary to section 3-4 of the Council Rules; and

(c) failed to ensure the contract included the written term that adjustments in favour of the sellers would include the cost of the oil remaining in the oil tank, in light of the sellers’ instructions in this regard and the fact that the form of contract included a contrary term—namely that the benefit would accrue to the buy-

ers’ benefit, contrary to sections 3-3(1)(a), (b) and (c) of the Council Rules.

RESULT: James Sidney Parsons was suspended for thirty (30) days from June 27, 2012 to July 26, 2012 (inclusive), and was ordered to successfully complete the Real Estate Trading Services Remedial Education Course and pay enforcement expenses to the Council in the amount of \$1,800.00.

Karim Dhanji

ISSUE: Karim Dhanji, representative, West Coast Realty Ltd. (Coq) dba Sutton Group-West Coast Realty (Coq), Coquitlam, 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 adequately disclose to his client the nature of the representation that he was providing to the client, contrary to section 5-10 of the Council Rules;

(b) altered a signed contract by hand writing his name on the first and fourth page of the Contract of Purchase and Sale after the seller had signed the contract, contrary to section 3-4 of the Council Rules.

RESULT: Karim Dhanji was suspended for twenty-one (21) days from June 20, 2012 to July 10, 2012 (inclusive), and was ordered to successfully complete the Real Estate Trading Services Remedial Education Course and pay enforcement expenses to the Council in the amount of \$1,000.00.

Dennis Ka-Tsun Chan

ISSUE: Dennis Ka-Tsun Chan, representative, West Coast Realty Ltd. (Brdwy) dba Sutton Group-West Coast Realty (Brdwy), 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) contrary to section 3-3(1)(i) of the

Council Rules, failed to take reasonable steps to avoid a conflict of interest, in that he made an offer to purchase the property, while the brokerage was acting as a limited dual agent, and he was continuing to provide trading services to the seller;

(b) contrary to section 3-3(1)(j) of the Council Rules, failed to promptly and fully disclose the conflict of interest, in that he failed to fully and promptly disclose to the buyers that he was acting for the seller, the brokerage was acting as a limited dual agent, and he was making an offer to purchase the property;

(c) contrary to one or more than one of sections 3-3(1)(a) and 3-4 of the Council Rules, failed to act in the best interests of his client and failed to use reasonable care and skill, in that he failed to confirm in writing the disclosure to the seller of the conflict of interest as set out in (a) above, did not give the seller the opportunity to cancel the listing, did not withdraw as brokerage representative acting for the seller, did not cease all communication with the seller, and did not provide a Disclosure of Interest in Trade form in compliance with section 5-9 of the Council Rules, all as recommended by the Council in the circumstances;

(d) contrary to section 3-2(1)(a) of the Council Rules, failed to provide to his managing broker the original or copy of general records, in that he failed to provide to his managing broker the original or a copy of the form relating to the transaction; and

(e) contrary to section 5-9 of the Council Rules, failed to make disclosure in accordance with section 5-9 of the Council Rules in that he failed to provide to the seller a Disclosure of Interest in Trade form that complied with section 5-9 of the Council Rules.

RESULT: Dennis Ka-Tsun Chan was suspended for fourteen (14) days from May 23, 2012 to June 5, 2012 (inclusive), and was ordered to successfully complete the Real Estate Trading Services Remedial Education Course and pay enforcement expenses to the Council in the amount of \$1,000.00.

Disciplinary Decisions, *cont'd*

Mei (Mebal) Meng

ISSUE: Mei (Mebal) Meng, representative, Royal Pacific Realty Corp., Vancouver, entered into a Consent Order with the Council that, while licensed with West Coast Realty Ltd. (VanCam) dba Sutton Group-West Coast Realty (VanCam), Vancouver, she committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that she, while acting as limited dual agent for the assignor in the listing by way of a MLS® listing of the assignor's interest as a buyer under an April 12, 2010 Agreement of Purchase and Sale and the assignment of the assignor's interest in the contract to the assignee by way of a July 30, 2010 Assignment of Contract of Purchase and Sale of property that the assignor had purchased from a seller/developer:

(a) failed to clarify to the assignee in writing that the purchase price under the assignment excluded HST and that net HST would be payable on closing, contrary to section 35(1)(a) of the *Real Estate Services Act* and sections 3-3(1)(d) and 3-4 of the Council Rules;

(b) failed to clarify the nature of her dual agency relationship with the assignee and the buyer at the outset, contrary to section 35(1)(a) of the *Real Estate Services Act* and sections 3-3(1)(f), 3-4, 5-1 and 5-10 of the Council Rules;

(c) failed to disclose to the assignee the remuneration she anticipated receiving, contrary to section 35(1)(a) of the *Real Estate Services Act* and sections 3-3(1)(f), 5-8 and 5-11 of the Council Rules;

(d) failed to exercise reasonable care and skill, contrary to section 35(1)(a) of the *Real Estate Services Act* and section 3-4 of the Council Rules, including:

(i) ensuring the assignment amount, as described in the assignment, was clearly outlined,

(ii) ensuring the assignment clearly set out the manner in which the HST would be treated, and

(iii) ensuring a copy of the contract was attached to the assignment or that a copy of the contract was promptly provided to the assignee upon the execution by the

assignee of the assignment.

RESULT: Mei (Mebal) Meng was suspended for fourteen (14) days from May 16, 2012 to May 29, 2012 (inclusive), and was ordered to successfully complete the Real Estate Trading Services Remedial Education Course and pay enforcement expenses to the Council in the amount of \$1,000.00.

Kaia Samantha Penaluna

ISSUE: Kaia Samantha Penaluna, 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) and 35(1)(d) of the *Real Estate Services Act* in that, in her capacity as a limited dual agent, in relation to the sale and purchase of property, she:

(a) failed to use reasonable efforts to discover the quantity of water that was produced by the well on the subject property, contrary to section 3-3(1)(h) of the Council Rules;

(b) failed to act with reasonable care and skill when she advised the buyers that the well produced 5 gallons of water per minute but did not secure the seller's representation about the quantity of water in writing; obtain a report from the seller verifying that information, or advise the buyers to make their offer subject to obtaining and being satisfied with a report concerning the quantity and quality of the water supply, contrary to section 3-4 of the Council Rules; and

(c) failed to apply reasonable care and skill when she advised the buyers that the well test, that was done on March 7, 2010 reported on both the quality and quantity of water, when in fact the test did not measure the quantity of water flow, contrary to section 3-4 of the Council Rules.

RESULT: Kaia Samantha Penaluna was suspended for ten (10) days upon licence reissuance, was ordered, as a condition of continued licensing, to

successfully complete the Real Estate Trading Services Remedial Education Course, and, as a further condition of continued licensing, to pay enforcement expenses to the Council in the amount of \$1,000.00.

Anita Wai Bing Kwan

ISSUE: Anita Wai Bing Kwan, associate broker, Stern Realty (1994) Ltd. dba Coldwell Banker Premier 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 section 3-2(2)(a) of the Council Rules by failing to keep her managing broker informed of the activities being performed on behalf of the brokerage by failing to inform the managing broker of the buyer's concerns with regards to an encroachment that was not disclosed prior to purchasing the property located at W. 14th Avenue;

(b) contravened section 3-2(2)(a) of the Council Rules by failing to keep her managing broker informed of her offer to reimburse the buyer \$15,000 for the undisclosed encroachment; and

(c) contravened section 3-3(1)(f) of the Council Rules by failing to disclose to her client all known material information respecting the real estate services and the trade in real estate in that she failed to disclose to her seller client that she had agreed to reimburse \$15,000 to the buyer in relation to the purchase of the property.

RESULT: Anita Wai Bing Kwan was suspended for seven (7) days from May 16, 2012 to May 22, 2012 (inclusive), and was ordered to successfully complete the Real Estate Trading Services Remedial Education Course and pay enforcement expenses to the Council in the amount of \$1,000.00.

Hee Young (Christine) Kim

ISSUE: Hee Young (Christine) Kim,

Disciplinary Decisions, *cont'd*

associate broker, New Star Realty Ltd., 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 while providing rental property management services to landlords, owners of two strata units, she:

(a) provided rental property management services other than on behalf of her related brokerage, when she provided rental property management services to the landlords in respect to the two rental strata units, contrary to section 7(3)(a) of the *Real Estate Services Act*; and

(b) failed to ensure that she promptly provided to her managing broker the original or a copy of all records referred to in section 8-4 and 8-6 of the Council Rules that were in her possession and that were prepared by her or on her behalf, or received from or on behalf of a principal in respect to the two rental strata units in accordance with section 3-2(1) of the Council Rules, contrary to section 3-3(1)(a) and (c) and 3-4 of the Council Rules.

RESULT: Hee Young (Christine) Kim was suspended for seven (7) days from July 4, 2012 to July 10, 2012 (inclusive), and was ordered to successfully complete the Rental Property Management Remedial Education Course, and pay enforcement expenses to the Council in the amount of \$1,000.00.

Kam Nong (Melissa) Wu

ISSUE: Kam Nong (Melissa) Wu and Melissa Wu Personal Real Estate Corporation, West Coast Realty Ltd. (VanCam) dba Sutton Group-West Coast Realty, Vancouver, while licensed as Kam Nong (Melissa) Wu, representative, West Coast Realty Ltd. (VanCam) dba Sutton Group-West Coast 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) failed to promptly provide her man-

aging broker with a copy of the Disclosure of Interest in Trade form, Disclosure of Remuneration form, and Assignment Agreement, contrary to section 3-2(1) of the Council Rules;

(b) failed to keep her managing broker advised of the real estate services she was providing on behalf of an assignor and on her own behalf, contrary to section 3-2(2) of the Council Rules; and

(c) provided real estate services other than on behalf of the brokerage with which she was licensed, contrary to section 7(3) of the *Real Estate Services Act*.

RESULT: Kam Nong (Melissa) Wu was reprimanded, and was ordered to pay a discipline penalty to the Council in the amount of \$2,500.00, to successfully complete the Real Estate Trading Services Remedial Education Course, and to pay enforcement expenses to the Council in the amount of \$1,000.00.

Colin Ross McDonald Lighthouse Realty Ltd.

ISSUE: Colin Ross McDonald, managing broker, Lighthouse Realty 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:

(a) contravened section 2-19 of the Council Rules by failing to promptly provide a further response, as requested by the Director, Accounting and Audit, to the Office and Records Inspection Report; and

(b) contravened section 3-1(1)(b) and 3-1(3)(a) of the Council Rules by failing to ensure that the brokerage maintained proper books, accounts and other records as required by section 25 of the *Real Estate Services Act*.

ISSUE: Lighthouse Realty 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 2-19 of the Council Rules by failing to promptly provide a further response, as requested by the Director, Accounting and Audit, to the Office and Records Inspection Report;

(b) contravened section 25 of the *Real Estate Services Act* by failing to maintain proper books, accounts and other records of the brokerage.

RESULT: Colin Ross McDonald was reprimanded, was ordered to successfully complete the Real Estate Trading Services Remedial Education Course, 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.

RESULT: Lighthouse Realty Ltd. was ordered to pay a discipline penalty to the Council in the amount of \$2,000.00 and pay the Council's audit costs in the amount of \$825.00.

Robert (Bob) Dennis Timewell

ISSUE: Robert (Bob) Dennis Timewell, associate broker, Sutton Centre Realty Ltd. dba Sutton Centre Realty, Burnaby, 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 submitting his application for licence renewal dated July 8, 2011 in that he:

(a) contravened section 35(1)(g) of the *Real Estate Services Act* by confirming that he had completed the course requirements of the Council's Relicensing Education Program prior to the expiration of his licence on July 13, 2011, and certified that the information contained in his application for licence renewal was true and complete, 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

Disciplinary Decisions, *cont'd*

Relicensing Education Program prior to the expiration of his licence on July 13, 2011 and prior to submitting his application to the Council for renewal of his licence, and was thus not qualified to be licensed, pursuant to section 10(b)(ii) of the *Real Estate Services Act*.

RESULT: Robert (Bob) Dennis Timewell 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 \$1,250.00.

James Ashley Henry Macdonald Realty Okanagan South Ltd.

ISSUE: Macdonald Realty Okanagan South Ltd., Osoyoos, 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) of the Council Rules in that it failed to file an Accountant's Report with the Council by the prescribed date.

ISSUE: James Ashley Henry, managing broker, Macdonald Realty Okanagan South Ltd., Osoyoos, 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 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* 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: Macdonald Realty Okanagan South Ltd. is reprimanded.

RESULT: James Ashley Henry is reprimanded.

RESULT: Macdonald Realty Okanagan South Ltd. and James Ashley Henry are ordered to be jointly and severally liable

to pay a discipline penalty to the Council in the amount of \$1,000.00. to be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,000.00.

Anthony Leo Wagner

ISSUE: Anthony Leo Wagner, associate broker, W.P.J. McCarthy and Company Ltd., Burnaby, 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 submitting his application for licence renewal dated June 8, 2011, in that he:

(a) contravened section 35(1)(g) of the *Real Estate Services Act* by confirming that he had completed the course requirements of the Council's Relicensing Education Program prior to the expiration of his licence on July 22, 2011, and certified that the information contained in his application for licence renewal dated June 8, 2011, was true and complete, when he had not completed the course requirements; and

(b) contravened section 2-8.1(2) of the Council Rules by failing to complete the course requirements of the Council's Relicensing Education Program prior to the expiration of his licence on July 22, 2011 and prior to submitting his application to the Council for renewal of his licence and was thus not qualified to be licensed pursuant to section 10(b)(ii) of the *Real Estate Services Act*.

RESULT: Anthony Leo Wager was reprimanded, and was ordered to pay a discipline penalty to the Council in the amount of \$1,000.00 and to pay enforcement expenses to the Council in the amount of \$1,250.00.

Jun Hyun Park

ISSUE: Jun Hyun Park, currently unlicensed, entered into a Consent Order with the Council that, while licensed as a representative with West Coast Realty Ltd. (Brdwy) dba Sutton Group–West Coast Realty (Brdwy), Vancouver, and,

while licensed as a representative with New World 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 2-21(2)(e) of the Council Rules by failing to promptly notify the Council, in writing, of his bankruptcy proceedings and discharge from bankruptcy;

(b) contravened section 2-21(4) of the Council Rules by failing to notify his managing broker of his bankruptcy proceedings and discharge from bankruptcy; and

(c) contravened section 35(1)(g) of the *Real Estate Services Act* by responding "No" to the question on his licence renewal application dated June 12, 2010, which states "*Have you ever been subject to bankruptcy, insolvency or receivership proceedings?*", which he knew or ought to have known was a false or misleading statement.

RESULT: Jun Hyun Park was reprimanded and was ordered to pay enforcement expenses to the Council in the amount of \$1,250.00.

Alice Theresa Thompson

ISSUE: Alice Theresa Thompson, representative, Total Concept Management & Realty Inc., Campbell River, entered into a Consent Order with the Council that, while licensed with Check Realty (1998) Ltd. dba Re/Max Check Realty, Campbell River, she committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening sections 3-3(1)(c) and 3-3(1)(e) of the Council Rules in that she provided an insurance company with confidential information concerning a property in relation to a fire that had occurred on the property without the authorization of the client.

RESULT: Alice Theresa Thompson was reprimanded, and was ordered to successfully complete the Real Estate Trading Services Remedial Education Course and pay enforcement ex-

Disciplinary Decisions, *cont'd*

penses to the Council in the amount of \$1,000.00.

Shoeleh Behinfar

ISSUE: Shoeleh Behinfar, representative, Royalty Group Realty Inc., Vancouver, entered into a Consent Order with the Council that, while licensed with West Vancouver Realty Ltd. dba Royal LePage Northshore, West Vancouver, she committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that she, contrary to section 5-9(1)(a) of the Council Rules, failed to make disclosure in that she failed to provide to the seller a Disclosure of Interest in Trade form in the form approved by the Council prior to that contract being entered into between the seller and her.

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

Corri Ann George

ISSUE: Corri Ann George, representative, Central Realty Ltd. (BbyHst) dba Re/Max Central (BbyHst), Burnaby, entered into a Consent Order with the Council that she, while licensed with All Points Realty Group Ltd. dba Re/Max All Points Realty, Coquitlam, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that she:

(a) failed to act with reasonable care and skill by not recommending to the buyers that the Contract of Purchase and Sale of the property be made subject to the buyers receiving and being satisfied with a written report from the company engaged to remove the vermiculite from the property and that the vermiculite had been removed, contrary to section 3-4 of the Council Rules; and

(b) failed to advise the buyers to seek independent professional advice regarding the Asbestos Analysis conducted by

CANTEST, on or about January 25, 2008, which was provided to the licensee by the seller on January 28, 2008, contrary to section 3-3(1)(d) of the Council Rules.

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

David Grahame Cooper

ISSUE: David Grahame Cooper, managing broker, Spotlight Realty Ltd. dba Spotlightrealty.ca, 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, between December 16, 2010 and January 25, 2011, he failed to ensure that an individual's real estate licence was operative and transferred to the brokerage before the brokerage advertised that individual to be licensed to provide real estate services on behalf of the brokerage, contrary to section 6(2) of the *Real Estate Services Act* and section 3-1 of the Council Rules.

RESULT: David Grahame Cooper was reprimanded and was ordered to pay enforcement expenses to the Council in the amount of \$1,000.00.

Peter Paul Haladin

ISSUE: Peter Paul Haladin, managing broker, First Capital Realty (02) Ltd., Surrey, 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)(a) of the *Real Estate Services Act* by offering to provide strata management services to a strata corporation for or in expectation of remuneration without being licensed to provide those services.

RESULT: Peter Paul Haladin was reprimanded and was ordered to pay enforcement expenses to the Council in the amount of \$1,000.00.

Strata Management Services

James Ashley Henry British Columbia Strata Management Inc.

ISSUE: British Columbia Strata Management Inc., Osoyoos, 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* by contravening section 7-7(1) of the Council Rules in that it failed to file an Accountant's Report with the Council by the prescribed date.

ISSUE: James Ashley Henry, managing broker, British Columbia Strata Management Inc., Osoyoos, 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 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* 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: British Columbia Strata Management Inc. is reprimanded.

RESULT: James Ashley Henry is reprimanded.

RESULT: British Columbia Strata Management Inc. and James Ashley Henry are ordered to be jointly and severally liable to pay a discipline penalty to the Council in the amount of \$1,000.00 and jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,000.00.

Mountain Strata Management Ltd.

ISSUE: Mountain Strata Management Ltd., Osoyoos, entered into a Consent Order with the Council that it committed professional misconduct within the meaning of section 35(1)(a) of the *Real*

Disciplinary Decisions, *cont'd*

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.

RESULT: Mountain Strata Management Ltd. is reprimanded and ordered to pay enforcement expenses to the Council in the amount of \$1,000.00.

Rental Property Management Services

Andrzej (Andrew) Piotr Kuras
Richard Thomas Valouche
TRG The Residential Group Realty

ISSUE: Andrzej (Andrew) Piotr Kuras, associate broker, TRG The Residential Group Realty Ltd. dba TRG The Residential Group 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) contrary to section 7(3)(a) of the *Real Estate Services Act*, provided real estate services other than on behalf of the brokerage in relation to which he was licensed, in that four of the five Sample Agreements were in the name of Vancouver Rental Properties Ltd. and not TRG, and Mr. Kuras provided real estate services in respect of those four Sample Agreements;

(b) contrary to section 7(3)(a) of the *Real Estate Services Act*, provided real estate services other than on behalf of the brokerage in relation to which he was licensed, in that he advertised his services on the internet in a website named www.vancouverrelocation.com and not through TRG;

(c) contrary to section 27(1)(a) of the *Real Estate Services Act*, failed to promptly pay or deliver to his brokerage money received on behalf of a principal, in that in January 2010 the security deposit cheque for property #B-060012 was deposited five days after receipt; the rent cheque for property #B-060012 for January 2010 was deposited five days after receipt; in February 2010 the security deposit

cheque for property #B-060013 was deposited ten days after receipt; in February 2010 the security deposit cheque for property #B-070010 was deposited 17 days after receipt; the rent cheque for property #B-070010 for February 2010 was deposited five days after receipt; in July 2009 the security deposit cheque for property #B-090004 was deposited ten days late; and the rent cheque for property #B-090004 for July 2009 was deposited 10 days late;

(d) contrary to section 3-2(1)(a) and 3-2(1)(c) of the Council Rules, failed to promptly provide to the managing broker general records and rental property management records, in that he did not provide to his managing broker any general records or rental property management records in respect of the activities conducted as set out in paragraph (a) above;

(e) contrary to section 3-2(1)(a) and 3-2(1)(c) of the Council Rules, failed to promptly provide to the managing broker general records and rental property management records, in that he did not provide to his managing broker any general records or rental property management records in respect of the activities conducted as set out in paragraph (b) above;

(f) contrary to section 3-2(2)(a) of the Council Rules, failed to keep his managing broker informed of the real estate services he was providing, in that he failed to inform his managing broker of the real estate services being provided by him as set out in paragraph (a) above;

(g) contrary to section 3-2(2)(a) of the Council Rules, failed to keep his managing broker informed of the real estate services he was providing, in that he failed to inform his managing broker of the real estate services being provided by him as set out in paragraph (b) above;

(h) contrary to one or more than one of sections 3-3(1)(a) and 3-3(1)(c) of the Council Rules, failed to act in the best interests of his client and failed to act within the scope of authority given by his client, in that management fees paid to him appear to include the non-resident tax to be

withheld for non-resident owners;

(i) contrary to one or more than one of sections 3-3(1)(a) and 3-3(1)(c) of the Council Rules, failed to act in the best interest of his client and failed to act within the scope of authority given by his client, in that management fees paid to him included a monthly \$25.00 fee for advertising when this fee was not authorized in rental property management agreements for properties #B-060012, #B-060013, #B-060027, #B-070010 and #B-090004;

(j) contrary to one or more than one of sections 4-5(1) and 4-5(2) of the Council Rules, failed to ensure that his name and his brokerage's name were clearly indicated, in that four of the Sample Agreements were in the name of "Vancouver Rental Properties Ltd." and not TRG, and none contained the name of Mr. Kuras;

(k) contrary to one or more than one of sections 4-5(1) and 4-5(2) of the Council Rules, failed to ensure that his name and his brokerage's name were clearly indicated, in that all of the owner statements as identified in the Report were stated to be prepared by "Vancouver Rental Properties Ltd." and not TRG, and none contained the name of Mr. Kuras; and

(l) contrary to section 4-6(2) of the Council Rules, failed to prominently display the name of his brokerage in advertising, in that on the website www.vancouverrelocation.com the name of the brokerage was not prominently displayed.

ISSUE: Richard Thomas Valouche, managing broker, TRG The Residential Group Realty Ltd. dba TRG The Residential Group 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) contrary to section 6(2) of the *Real Estate Services Act*, failed to ensure that TRG performed its duties, in that he permitted the breaches of the *Real Estate Services Act* and Council Rules as set out in paragraphs (a) to (q) in the issue with respect to TRG The Residential Group Realty Ltd. dba TRG The Residential Group Realty;

Disciplinary Decisions, *cont'd*

(b) contrary to section 3-1(1) of the Council Rules, failed to be actively engaged in the management of his brokerage; failed to ensure that the business of his brokerage was carried out competently and in accordance with the *Real Estate Services Act* and Council Rules; and failed to ensure that there was an adequate level of supervision, in that he permitted the breaches of the *Real Estate Services Act* and Council Rules set out in paragraphs (a) to (l) in the issue with respect to Andrzej (Andrew) Piotr Kuras and (a) to (q) in the Issue with respect to TRG The Residential Group Realty Ltd. dba TRG The Residential Group Realty;

(c) contrary to section 3-1(3) of the Council Rules, failed to ensure that the trust accounts and records of his brokerage were maintained in accordance with the *Real Estate Services Act* and the Council Rules, in that he permitted the breaches of the *Real Estate Services Act* and the Council Rules set out in paragraphs (k), (n), (o), (p) and (q) in the issue with respect to TRG The Residential Group Realty Ltd. dba TRG The Residential Group Realty; and

(d) contrary to section 7-4(2) of the Council Rules, failed to ensure that the monthly reconciliation was dated, in that he did not indicate the date of his monthly reviews on the reconciliations.

ISSUE: TRG The Residential Group Realty Ltd. dba TRG The Residential Group Realty, Vancouver, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that it:

(a) contrary to section 25 of the *Real Estate Services Act*, failed to maintain proper books, accounts and other records, in that as set out herein in paragraphs (k), (n), (o), (p) and (q), TRG failed to maintain proper books, accounts and other records;

(b) contrary to section 30 of the *Real Estate Services Act*, failed to properly withdraw money from a trust account, in that the monthly fees paid to Mr. Kuras for properties #B-060012, #B-060013, #B-600027 and #B-090004 included non-resident tax withheld for owners;

(c) contrary to section 30 of the *Real Estate Services Act*, failed to properly withdraw money from a trust account, in that cheque #5785 dated January 5, 2010, charged to property #B-090004 was payable to Mr. Kuras for withholding tax;

(d) contrary to section 30 of the *Real Estate Services Act*, failed to properly withdraw money from a trust account, in that cheque #5839 dated January 15, 2010 in the amount of \$5,879.95, written on the pooled rental trust account, was made payable to Vancouver Relocation Services without appropriate supporting documentation;

(e) contrary to section 30 of the *Real Estate Services Act*, failed to properly withdraw money from a trust account, in that cheque #5926 dated January 21, 2011 in the amount of \$11,559.67, written on the pooled rental trust account, was made payable to Vancouver Relocation Services without appropriate supporting documentation;

(f) contrary to section 30 of the *Real Estate Services Act*, failed to properly withdraw money from a trust account, in that management fees paid to Mr. Kuras included a \$25 a month fee for advertising when this fee was not authorized in rental property management agreements for properties #B-060012, #B-060013, #B-060027, #B-070010 and #B-90004;

(g) contrary to one or more than one of sections 5-1(3) and 5-1(4) of the Council Rules, failed to ensure that a service agreement clearly stated the terms of the agreement and contained certain terms, in that four of five of the Sample Agreements were in the name of "Vancouver Rental Properties Ltd." and not in the name of the brokerage;

(h) contrary to section 5-1(4) of the Council Rules, failed to ensure that a service agreement contained certain terms, in that none of the Sample Agreements included a provision respecting the use and disclosure of personal information;

(i) contrary to section 5-1(5) of the Council Rules, failed to ensure that a service agreement respecting rental property management services contained certain

terms, in that none of the Sample Agreements included terms for how security deposits, pet damage deposits and other deposits were to be dealt with;

(j) contrary to section 5-1(5) of the Council Rules, failed to ensure that a service agreement respecting rental property management services contained terms, in that none of the Sample Agreements included a description of the records to be kept by TRG on behalf of the client;

(k) contrary to section 7-4(2) of the Council Rules, failed to have the monthly reconciliation reviewed, dated and initialed by a managing broker, in that none of the monthly reconciliations identified in the Report were initialed by Mr. Valouche;

(l) contrary to section 7-5 of the Council Rules, made payments out of trust that reduced an account to a negative balance, in that owners' statements for properties #B-700010 and #B-090004 showed shortages;

(m) contrary to section 7-5 of the Council Rules, made payments out of trust that reduced an account to a negative balance, in that the commission trust account showed amounts in January 2010 as overpayments;

(n) contrary to section 8-1 of the Council Rules, failed to maintain financial records necessary for appropriate and timely accounting, in that one or more than one of the following deficiencies were identified in the Report;

(i) the management fees recorded on the owner's statements did not agree with the actual cheques written on the trust account and debited to each individual account;

(ii) there was no monthly breakdown of management fees to reconcile to the amount of the cheque written;

(iii) some expenses debited to the ledgers did not appear on the owner's statements;

(iv) the non-resident tax shown as a deduction on the owner's statements did not have a matching deduction or cheque to CRA to indicate the payment of the tax in the individual trust ledgers nor were any cheques to CRA evident in the

Disciplinary Decisions, *cont'd*

bank documentation for the months of December 2009 or January 2010; and (v) amounts appeared to have been inappropriately removed from trust without corresponding notation on the applicable owner's statement;

(o) contrary to section 8-3(a)(iv) of the Council Rules, failed to maintain a separate trust ledger for a licensee in that the trust ledgers in the commission trust account were kept by deal number and not by licensee;

(p) contrary to section 8-3(b)(ii) of the Council Rules, failed to maintain a monthly trust liability and asset reconciliation listing every person for which the brokerage holds trust money and the amount for each person, in that it did not include a trust liability reconciliation in the monthly reconciliations for the rental property management trust account; and

(q) contrary to section 8-6(2)(b) of the Council Rules, failed to retain a record of deposits, in that it did not maintain a list of security deposits held in respect of the rental property management services.

RESULT: Andrzej (Andrew) Piotr Kuras was suspended for fourteen (14) days from May 16, 2012 to May 29, 2012 (inclusive), and was ordered to successfully complete the Rental Property Management Remedial Education Course and pay enforcement expenses to the Council in the amount of \$1,000.00.

RESULT: Richard Thomas Valouche's managing broker's licence was suspended for thirty (30) days from May 16, 2012 to June 14, 2012 (inclusive), but that he was immediately eligible to be licensed as an associate broker or representative and was ordered, as a condition of continued licensing as a man-

aging broker, to successfully complete the disciplinary education assignments applicable to Chapter 2 (Mandatory Requirements Under the *Real Estate Services Act*), Chapter 3 (Business Standards), Chapter 7 (Personnel Management, Part I: Job Analysis, Recruitment and Selection) and Chapter 13 (Marketing, Part II: Potential Liability Under the Competition Act and Under the Law of Agency) of the Managing Broker's Licensing Course.

RESULT: TRG The Residential Group Realty Ltd. dba TRG the Residential Group Realty was reprimanded.

RESULT: TRG The Residential Group Realty and Richard Thomas Valouche were ordered to be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,000.00. ■

Retraction

On October 11, 2011, the Real Estate Council's Consent Order Review Committee reviewed a consent proposal by Mona Marlene Murray and MCM Real Estate Ltd. The Consent Order dated

November 3, 2011, published in the December 2011 issue of the *Report from Council*, was incorrect and did not reflect the wording of the consent proposal accepted by the Consent Order Review Committee on October 11, 2011. That Order has been vacated and removed

from all websites. The correct Consent Order dated April 24, 2012 has been published on the Real Estate Council's website and on the Canadian Legal Information Institute website. The Council apologizes to Mona Marlene Murray and MCM Real Estate Ltd. for this error. ■

Feedback?

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

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