



Report from Council

October 2006 Volume 42, No. 2

To Read or Not to Read: Strata Council Meeting Minutes

In *Holt v. Thompson et al* [2006 BCSC 1059] the licensee representing the buyer assured the buyer that she would not sell her a leaky condo. She wrote an offer on behalf of the buyer that was subject to the buyer reading and approving the Strata Council meeting minutes for the past two years. The seller had disclosed that there had been water leakage in other buildings in the same complex which had been resolved.

The licensee testified that it was not her usual practice to read the strata minutes but to leave that to the buyer. In this case, however, she told the buyer that she would read the minutes and put yellow stickies on the important parts of the minutes. The licensee then read the whole of the minutes which took approximately four or five hours. She put yellow stickies on those parts of the minutes that she felt were important and told the buyer to read them.

The minutes indicated that the building containing the buyer's unit was under investigation for water ingress problems. The licensee told the buyer that, if there was a problem, it would be taken care of by the home warranty and builder as was the case in two of the other buildings in the complex.

The buyer removed subjects and a \$10,000 holdback was added to the agreement. The buyer acknowledged being advised that certain deficiencies may need to

be repaired for the strata complex which may result in the approval of a special assessment.

When the transaction closed and the buyer took possession she received an assessment for \$31,280.00 and \$9,384.02 for repairs caused by water damage.

In an action against the municipality, the buyer recovered \$16,136.14 and after the \$10,000.00 holdback was applied her loss was \$14,527.96.

The judge found that the licensee failed in her duty to her client. She told her client that she would not sell her a leaky condo and that is exactly what happened in the circumstances. The licensee either knew or ought to have known the condominium had significant water ingress problems. The trial judge found it unlikely that the licensee fully discussed the specific concerns raised in the minutes with the buyer and that, if the buyer had properly comprehended those issues, she would not have proceeded with the purchase.

The judge held that the licensee had a duty to make the specifics of the risk the buyer was undertaking very clear to her and not just to urge her to read the minutes when she knew that the buyer was very busy and not inclined to read the minutes. The judge held that the licensee had decided that it was safe to rely on the new home warranty program. She was unfamiliar with its terms and did not fully explain the nature of this reliance or its risks

to the buyer.

The judge found the licensee negligent when she misrepresented to the buyer the state of the condominium being purchased and that her interests were properly protected when they were not.

The judge awarded the buyer the balance of the special assessments not recovered, namely, \$14,527.96 plus general damages in the amount of \$5,000.

Licensees constantly face the dilemma of whether to read the strata council minutes when acting as a buyer's agent in the purchase of a strata unit. In this regard, the following guidelines on pages 198 and 199 of the *Licensee Practice Manual* (6th Edition) are recommended:

"If a buyer's agent elects not to read the available strata minutes, the licensee should ensure that he or she has already made all the inquiries reasonably expected

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STATISTICS
(OCTOBER 2006)
REPRESENTATIVES: 14,712
ASSOCIATE BROKERS: 1,934
MANAGING BROKERS: 1,367
BROKERAGES: 1,410

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.

For further information, contact:
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A Note From the Chair

Licensees will note that this *Report* contains an article highlighting the obligations of buyer's agents in relation to strata meeting minutes. Given the importance of this information to buyers, all licensees engaged in the sale of strata units must familiarize themselves with their obligations with respect to strata minutes.

Included with this *Report* is a CD-ROM (produced by the BC Real Estate Association and funded by the Council) highlighting the proper

method for preparing and presenting enforceable Contracts of Purchase and Sale. I encourage all licensees engaged in trading services to review the CD-ROM in order that they may render the highest level of service to consumers.

Finally, managing brokers should note that there are a number of discipline decisions in this *Report* that relate to the late filing of Accountant's Reports. I cannot stress enough the importance of brokerages filing a properly



Philip Jones

completed Accountant's Report by the required date. As evidenced by the discipline sanctions in this *Report*, the consequences for failure to file can be significant.

On behalf of Council,
Philip Jones, Chair

Strata Council Meeting Minutes ...continued from cover

of a competent licensee acting as a buyer's agent. These inquiries include, but are not limited to, asking one or more of the sellers, the listing agent, or a strata council member about the history of any problems with the building and the strata lot, as well as reading the bylaws. The Council expects the buyer's agent to read the bylaws for restrictions.

The licensee should also explain to the buyer the significance of the document in question and warn the buyer about the risks of not carefully reviewing the materials himself or herself. The licensee should also warn the buyer to obtain professional advice if the document raises a question of a technical nature, for example, to

get legal or engineering advice, where appropriate. Finally it is recommended that a licensee record these communications in writing in case any dispute later occurs over the matter.

If a licensee reads the strata minutes, the licensee needs to only accurately pass on the relevant information in the minutes to the buyer. There is no general duty requiring a licensee to go behind the minutes to investigate matters reported in the minutes. A buyer's agent should warn the buyer that the licensee does not take exclusive responsibility for reviewing the minutes and that the buyer should still carefully read the minutes himself or herself. The buyer's agents should tell the buyer

that the licensee reviews the minutes from a licensee's prospective and only to check for certain information about the property. The minutes will inform the buyer about more than the property; they will also give the buyer important information about the strata community. The licensee should also warn the buyer to obtain professional advice if the minutes raise any technical question. It is recommended that the licensee record these communications in writing."

Licensees with further questions may 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 November 13, 2006 for Remembrance Day, December 25, 2006 for Christmas Day and December 26, 2006 for Boxing Day. In addition, the Council office will close at noon on December 15, 2006.

Exclusive Buyer Agency Agreements

There has been much discussion over the past several months about the requirement for buyers' agents to disclose to their buyer clients the source and amount of their remuneration. The requirement of sections 5-8 and 5-11 of the Council Rules for a separate disclosure of this information arises most often because it is not common practice for buyers' agents and buyers to establish their relationship in a written service agreement the way that sellers' agents and sellers typically do through an exclusive listing agreement.

A written exclusive buyer agency agreement has many advantages for both licensees and their buyer clients. Services are described, obligations and potential conflicts of interest are addressed, the buyer's agent's remuneration is agreed to, and the conditions under which that remuneration is to be earned are detailed.

The 'standard form' Exclusive Buyer Agency Contract established by the member boards/associations of BCREA outlines a procedure to be followed by the buyer's agent with respect to remuneration. In Clause 4 it states that:

- prior to the buyer making an offer, the buyer's agent will advise the buyer of the total remuneration being offered by the seller and the seller's agent if the buyer is successful in purchasing the property,
- that amount will be deducted from the total remuneration payable by the buyer, and
- the buyer's agent will disclose any other remuneration to be received with respect to that property.

Where such an agreement is in place, the buyer is aware of and ultimately responsible for his/her agent's remuneration. The buyer's obligation is offset by the amount being offered by the seller's agent. But what happens if the

seller's agent is not offering sufficient remuneration to fully offset this obligation? And is the answer to this question different if there is no buyer agency agreement in place?

Where there is a buyer agency agreement in place, the buyer has some options available. The buyer could agree to pay the shortfall in remuneration directly to the buyer's agent (i.e. the brokerage), or the buyer could attempt to negotiate with the seller for the total remuneration to the buyer's agent to be payable from the proceeds of the sale.



This negotiation, as with any other involving the seller and the buyer, should take place in the contract of purchase and sale. It is important to understand that doing so is not the same as a licensee attempting to negotiate remuneration with one of the parties through the contract – that is inappropriate because the licensee is not a party to the contract.

This negotiation is between the buyer and the seller, similar to the parties negotiating

whether an expensive chattel will be left with the property, and the parties can agree or disagree on whether the buyer's agent's remuneration will be payable from the proceeds of the sale. If they do not agree, the buyer is responsible for any shortfall because they are bound to do so through the buyer agency agreement.

The situation is potentially much less certain where there is not a buyer agency agreement in place. The buyer likely has not committed to being responsible for ensuring the buyer's agent receives the remuneration that agent believes owing, and in fact may not be aware of what that agent's remuneration expectations are. The buyer might be prepared to attempt to negotiate the buyer's agent's remuneration being paid from the proceeds of the sale. But if the buyer is not prepared to do so, or if the seller doesn't agree, how is the agent's remuneration ensured? It isn't.

The Council is aware that some sellers' brokerages are suggesting that if a buyer's agent is not satisfied with the remuneration being offered through their listing agreement with a seller, the buyer's agent should enter into a fee agreement directly with the seller. While this is possible, it may only be done with the prior consent of the buyer client to do so, and it still may not create as

much certainty as a buyer agency agreement. If the seller does not wish to enter into a fee agreement and there is no buyer agency agreement in place, the buyer's agent is no further ahead. They may have provided their service but nobody has agreed to pay them.

The most certain way for a buyer's agent to ensure they are paid for the service they provide is for that agent's brokerage to enter into a buyer agency agreement with the buyer.

Contract of Purchase and Sale CD-ROM Included with this Report

To help licensees better understand how to prepare and present enforceable contracts, the BC Real Estate Association has created an interactive and informative CD-ROM called *Inside the Contract of Purchase and Sale: the Standard Form*. A copy of this CD-ROM is included with this *Report from Council* newsletter. Please note that the CD-ROM is only being distributed to licensees who are licensed to provide trading services. Individuals who are licensed to provide only rental or strata management services will not receive a copy.

The Contract of Purchase and Sale is a standard form copyrighted by the BC Real Estate Association and the Canadian Bar Association-BC Branch and is a tool used by most residential real estate practitioners in the province. The precise meaning of each section of the Contract of Purchase and Sale

must be clearly understood by real estate licensees, as licensees are obligated to produce a legally enforceable contract that accurately captures the intent of the parties involved. This multimedia presentation brings the contract to life with video segments, voiceovers and animations that draw attention to all aspects of the agreement.

The Council encourages all licensees engaged in trading services to carefully review the CD-ROM. Additional information about the CD-ROM can be obtained from the BC Real Estate Association by calling 604-683-7702.



Important Reminder About Advertising

Applicants for licensing are reminded that they may not conduct any form of advertising until they are properly licensed by the Real Estate Council. Simply submitting a licence application to the Council does **not** mean that

an applicant automatically becomes licensed and therefore no advertising can take place until such time as the Council issues a licence. Similarly, the Council reminds licensees that are transferring from one brokerage to

another that they cannot advertise under the new brokerage name until the transfer takes place.

Annual Report Posted on Website

The Council's Annual Report, including audited financial statements for its year ending June 30, 2006, has been posted on its website at www.recbc.ca.

RECBC Receives Awards

The Association of Real Estate License Law Officials (ARELLO) has honoured the Real Estate Council of BC with two top awards in its annual awards competition. The Council, together with the Real Estate Division at UBC, received the top Education award for the recently developed Strata Property

Management Licensing Course that is now in use by all strata management licensing students in the province. The Council is appreciative of the work and dedication of both the Real Estate Division and the Strata Management Advisory Committee in creating this high quality course.

In addition, the Council also came first in the Miscellaneous Education category with its recently re-written and updated 6th Edition Licensee Practice Manual (LPM). The Council appreciates the assistance and contributions from the LPM Sub-Committee with the re-write of the 6th Edition.

Relicensing Education Program Update

The Council recently approved a Relicensing Education Program (REP) that requires licensees to complete two courses every licensing cycle as a condition of continued licensing.

REP Requirements

In the first cycle, licensees will be required to complete one elective course and one mandatory course. The mandatory course for the first cycle is “*What Brokerages and REALTORS® Need to Know about Agency*”. Members of real estate boards will note that this course is the same mandatory course required for the PDP program.

The chart below shows the complete list of approved elective courses that licensees may take to fulfil their REP requirements. Many of the elective courses also fulfil the requirements of the PDP program.

Licensees who hold a licence with more than one service category are only required to complete **one** elective course in addition to the mandatory course.

Licensees must keep proof of completed education and attendance records in a specific education file along with sufficient information about the courses including completion certificates and marks.

Implementation Date

The first REP cycle will run for two years from the date of licence issuance during 2007 to 2009. REP courses must be completed during a licensee's two-year licence cycle. The following are some examples of different licence expiry dates and the corresponding REP requirements:

Renewal date was August 16, 2006
-No REP requirements during current licence cycle (August 16, 2006 to August 15, 2008)
-Complete 2 courses between August 16, 2008 and August 15, 2010

Renewal date is January 27, 2007
-Complete 2 courses by January 26, 2009

Renewal date is October 20, 2008
-Complete 2 courses by October 19, 2010

Frequently Asked Questions

Will I receive credit for the Agency Course I completed in 2006?

•Yes, licensees will receive credit for the Agency Course completed in 2006

Will I receive credit for REP accredited courses I took prior to my first REP cycle?

•Licensees will not receive credit for any REP Accredited courses that were completed prior to their first REP cycle.

What if I take more education than the minimum REP requirements?

•Licensees who complete more education than required will not be permitted to carry forward credits to the 2nd REP cycle.

Additional Information

More detailed information about the REP program is available under the Licensee Information tab on the Council's website at www.recbc.ca.

TRADING SERVICES ELECTIVE COURSES

BCREA Continuing Professional Education and Applied Practice Courses

- Residential Trading Services Applied Practice Course
- Commercial Trading Services Applied Practice Course
- What Brokerages and REALTORS® Need to Know about Agency
- Buyer Agency
- Legal Update (latest version)
- Risk Management for REALTORS®
- CONDO 101: Strata Law for REALTORS®
- CONDO 202: Advanced Strata Law for REALTORS®
- When in Doubt, Speak Out! What REALTORS® Need to Know about Property and Other Disclosures
- Foreclosures and Court Ordered Sales
- Risk Management for Commercial REALTORS® and Property Managers
- Risk Management for Property Managers
- The New *Real Estate Services Act* – Everything You Need to Know

UBC Real Estate Division Course

- Rental Property Management Supplemental Course and Examination
- Real Estate Trading Services Supplemental Course and Examination
- Strata Management Supplemental Course and Examination
- Completion of courses and examinations within the Diploma in Urban Land Economics
- Completion of courses and examinations within the Bachelor of Business in Real Estate
- Completion of courses and examinations within the Appraisal Institute of Canada Education Program
- Completion of courses and examinations within the Certificate Program in Real Property Assessment

RENTAL AND STRATA MANAGEMENT SERVICES ELECTIVE COURSES

BCREA Continuing Professional Education Courses

- CONDO 101: Strata Law for REALTORS®
- CONDO 202: Advanced Strata Law for REALTORS®
- Risk Management for Commercial REALTORS® and Property Managers
- Risk Management for Property Managers
- The New *Real Estate Services Act* – Everything You Need to Know

BOMI Institute

- Completion of courses and examinations within the Real Property Administrator Program (towards RPA designation)

Langara College

- Completion of courses and examinations within the Property Management Certificate Program

UBC Real Estate Division Course

- Rental Property Management Supplemental Course and Examination
- Real Estate Trading Services Supplemental Course and Examination
- Strata Management Supplemental Course and Examination
- Completion of courses and examinations within the Diploma in Urban Land Economics
- Completion of courses and examinations within the Bachelor of Business in Real Estate
- Completion of courses and examinations within the Appraisal Institute of Canada Education Program
- Completion of courses and examinations within the Certificate Program in Real Property Assessment

PAMA Continuing Education Courses

- To be determined in late 2006

Notice of Licensee Resignation

Ronald Milton Merkley, while licensed with Ronald Milton Merkley dba Retirement Realty, requested the Real Estate Council of British Columbia to discontinue disciplinary proceedings against him and Ronald Milton Merkley dba Retirement Realty as he has decided to permanently retire from real estate

practice. Mr. Merkley was facing a disciplinary hearing into his professional conduct and would have been required to appear before a Discipline Hearing Committee of the Real Estate Council to respond to these allegations.

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

licensed to act again, the Real Estate Council agreed with Mr. Merkley's request. The lifetime ban on Mr. Merkley's and Ronald Milton Merkley dba Retirement Realty's licensing under the *Real Estate Services Act* is effective as of May 26, 2006.

Disciplinary Decisions

Since the August 2006 *Report from Council* newsletter, the following actions have been taken as a result of disciplinary hearings and Consent Orders conducted by the Council.

➤ **Complaint:** Contravention of sections 3(1), 15(1), 16(1); 17, 31(1)(b), 31(1)(c) under the *Real Estate Act*; sections 9.12, 9.16 and 12.01 of Regulation 75/61 under the *Real Estate Act*; sections 6(2)(b), 25, 27(1) and (2) and section 35(1)(a) of the *Real Estate Services Act*; sections 2-19, 3-1 and 8-9 of the Council Rules under the *Real Estate Services Act*/Misconduct, negligence, incompetence and professional misconduct

■ **Issue:** New Way Realty Inc, brokerage, Campbell River,

(a) contravened section 15(1) which requires that a brokerage shall, for every real estate transaction where trust monies are held, keep a transaction record sheet,

(b) failed to pay into trust monies received on behalf of a client in that property management activities were being conducted separate and apart from the brokerage and funds that were being placed into a separate non-trust account, contrary to section 16(1);

(c) failed to deposit funds received from a client on behalf of a real estate transaction within a reasonable time into trust, contrary to section 16(1); and

(d) failed to keep proper books, up-to-date records and accounts contrary to section 12.01 of Regulation 75/61.

New Way Realty Inc. contravened the *Real*

Estate Services Act in that it

(i) failed to maintain proper books, accounts and other records, contrary to section 25 and section 8-9 of the Council Rules;

(ii) failed to deposit all monies received on behalf of a client with respect to a real estate transaction into trust, contrary to section 27(2).

■ **Issue:** Donald Lawrence Tymchuk, managing broker, New Way Realty Inc, Campbell River, was incompetent within the meaning of section 9.12 of Regulation 75/61 under the *Real Estate Act* in that he

(a) failed to ensure that the brokerage kept proper and up-to-date books, records and accounts, in accordance with sections 15(1) of the *Real Estate Act* and 12.01 of Regulation 75/61 under the *Real Estate Act*,

(b) failed to ensure that all monies held and received on behalf of the property management clients were deposited into the trust account in the name of the brokerage in accordance with section 16(1);

(c) permitted a representative to hold herself out as a managing broker without being the holder of a valid and subsisting managing broker's licence, contrary to section 3(1), in that she conducted property management services independent of her employing brokerage;

(d) withdrew funds from the brokerage's trust account and paid such funds directly to the licensee, contrary to section 17;

(e) failed to be in active charge of the business of the brokerage being conducted

in the brokerage's office, both with respect to the transactions that resulted in the complaint and in the general course of the business of the brokerage, contrary to section 9.16 of Regulation 75/61 and was incompetent in that regard, contrary to section 9.12 of Regulation 75/61.

Mr. Tymchuk, as managing broker, misconducted himself pursuant to section 31(1)(c) of the *Real Estate Act* in that he failed to ensure that all monies held and received on behalf of clients in respect of a real estate transaction were deposited into trust within a reasonable time, contrary to section 16(1) of the *Real Estate Act*.

Mr. Tymchuk, as managing broker, committed professional misconduct pursuant to section 35(1)(a) of the *Real Estate Services Act* in that he

(a) failed to ensure that the brokerage kept proper books, accounts and other records, in accordance with section 25 of the Act and sections 3-1(3) and 8-9 of the Council Rules;

(b) failed to ensure that the brokerage paid trust funds received on behalf of a principal in relation to real estate services promptly into trust, contrary to section 27(2);

(c) failed to ensure that a representative in providing rental property management services on behalf of the brokerage, immediately delivered all trust monies received on behalf of a principal in relation to real estate services to the brokerage trust account, contrary to section 27(1);

(d) failed to take reasonable steps to

ensure that the property management services provided by the representative on behalf of the brokerage complied with the provisions of the *Real Estate Services Act* and the Council Rules, including section 3-1(2) of the Council Rules;

(e) failed to fulfill his responsibility as a managing broker for the performance of the duties imposed on the brokerage by his licence within the meaning of section 6(2)(b) of the *Real Estate Services Act* and section 3-1(1) of the Council Rules; and

(f) failed to adequately and promptly respond to requests for a response by the Council contrary to section 2-19 of the Council Rules.

 **Penalty:** An independent accountant as defined by section 1-1 of the Council Rules, be engaged by New Way Realty Inc to provide a written opinion to the Council on the brokerage's compliance with the trust accounting and other financial requirements by September 6, 2006 with the cost to be paid by New Way Realty Inc. In the event that the opinion is received by the Council and it indicates that the books, records and accounts comply with the *Real Estate Services Act* and the Council Rules, New Way Realty Inc. shall be reprimanded. In the event that the opinion is not received by the Council, the licence of New Way Realty Inc. shall be cancelled. In the event that the opinion is received and it does not confirm that the books, records and accounts comply with the *Real Estate Services Act* and the Council Rules, a hearing shall be reconvened at which time it will be open to the Discipline Hearing Committee to make a determination as to the licence of New Way Realty Inc.

New Way Realty Inc. must, as of June 6, 2006, provide to the Council proper monthly reconciliations of its trust bank accounts and its general bank accounts for a period of twelve consecutive months as a condition of continued licensing. Each monthly trust reconciliation is to be received by Council no

later than the end of the month following the month to which the trust reconciliation relates.

Donald Tymchuk's managing broker's licence was cancelled effective July 20, 2006 and, as a condition of re-licensing as a managing broker, he must successfully complete the Broker's Licensing Course and Examination and enroll in and attend the Accelerated Residential Trading Services Applied Practice Course. He is immediately eligible to be licensed as a representative provided he has complied with all of the other terms of the Council decision as modified by the Financial Services Tribunal decision. As a condition of continued licensing as a representative, he must enroll in and attend the CPE Course on Agency by December 7, 2006 and "Legal Update" by June 7, 2007.

New Way Realty Inc. and Donald Tymchuk were fined the sum of \$10,000 jointly and severally to be paid within sixty days of the date of the decision. If that sum has not been paid by November 6, 2006, the licences of New Way Realty Inc. and Donald Tymchuk shall be suspended forthwith until such a time as the fine has been paid in full.

New Way Realty Inc. and Donald Tymchuk were assessed enforcement expenses jointly and severally in the sum of \$12,457.90 to be paid by November 6, 2006. If that sum has not been paid by November 6, 2006, the licences of New Way Realty Inc. and Donald Tymchuk shall be suspended forthwith until such time as the fine and enforcement expenses are paid in full.

Appeal: *The Financial Services Tribunal upheld the disciplinary decision of the Council in its entirety. The deadlines noted above incorporate the effect of the Financial Services Tribunal decision on the compliance deadlines in question. The Financial Services Tribunal will be considering, at some future date, whether*

costs of the appeal should be assessed against any of the parties to the appeal.

➤ **Complaint:** Contravention of sections 6(2)(b) and 35(1)(a) and (d) of the *Real Estate Services Act*, sections 7-7(1)(b), 3-1(1)(a) and (b) and 3-1(3) of the Council Rules under the *Real Estate Services Act*/ Failure to file Accountant's Report and Professional misconduct

■ **Issue:** Randall C. Lewis Company Ltd., Richmond, contravened section 7-7(1)(b) of the Council Rules and section 35 of the *Real Estate Services Act* in that it failed to file an Accountant's Report with the Real Estate Council by the prescribed date.

■ **Issue:** Randall Charles Frederick Lewis, managing broker, Randall C. Lewis Company Ltd., Richmond,

(a) committed professional misconduct within the meaning of section 35(1)(d) of the *Real Estate Services Act*,

(b) failed to fulfill his responsibilities as a managing broker for the performance of the duties imposed on the brokerage by its licence within the meaning of section 6-2(b) of the *Real Estate Services Act*;

(c) contravened section 3-1(1)(a) and (b) and section 3-1(3) of the Council Rules in that he failed to ensure that the Accountant's Report was filed with the Real Estate Council by the prescribed date.

 **Penalty:** Randall C. Lewis Company Ltd. shall be suspended for thirty days from September 16, 2006 to October 15, 2006 inclusive if Randall C. Lewis Company Ltd. files an Accountant's Report in a form acceptable to the Council by September 15, 2006. If Randall C. Lewis Company Ltd. does not file an Accountant's Report in a form acceptable to the Council by September 15, 2006, the licence of Randall C. Lewis Company Ltd. shall be cancelled effective September 16, 2006.

 **Penalty:** Randall Charles Frederick

Lewis, managing broker for Randall C. Lewis Company Ltd. shall be suspended from licensing under any category for thirty days from the date that the Accountant's Report is received by the Council if the brokerage files an Accountant's Report in a form acceptable to the Council on or before September 15, 2006. Further, prior to being relicensed as a managing broker, and as a condition thereof, Mr. Lewis shall successfully complete the disciplinary education assignments applicable to Chapter 2 (Mandatory Requirements Under the *Real Estate Services Act*) of the Broker's Licensing Course. If the brokerage does not file an Accountant's Report in a form acceptable to the Council by September 15, 2006, Mr. Lewis shall be suspended from licensing under any category for sixty days from September 16, 2006 to November 14, 2006 inclusive. His managing broker's licence shall be cancelled commencing November 14, 2006 and the Council will not consider an application from Mr. Lewis for licensing as a managing broker for three (3) years from November 14, 2006 to November 13, 2009. Further, prior to being relicensed as a managing broker, and as a condition thereof, Mr. Lewis shall successfully complete the Broker's Licensing Course and examination.

The Committee assessed a discipline penalty jointly and severally against Randall C. Lewis Company Ltd. and Randall Charles Frederick Lewis in the amount of \$1,000. The Committee further ordered that Council shall have, at the Council's sole discretion, the option of having a Council auditor complete an Office and Records Inspection of the books and records of Randall C. Lewis Company Ltd. within six months of the date of the decision with the cost of the inspection to be paid by Randall C. Lewis and Company Ltd.

Further, Randall C. Lewis Company Ltd. and Randall Charles Frederick Lewis are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$938.60.

➤ **Complaint:** Contravention of sections 6(2)(b), 35(1)(a) and 35(1)(d) of the *Real Estate Services Act*, sections 7-7(1), 3-1(3)(a), (b) and 3-1(3) of the Council Rules under the *Real Estate Services Act*/Professional misconduct

■ **Issue:** Point Grey Properties Inc., Vancouver, contravened section 7-7(1) of the Council Rules and section 35(1)(a) of the *Real Estate Services Act* in that it failed to file an Accountant's Report with the Real Estate Council by the prescribed date.

■ **Issue:** Stephen Edward Le Sage, managing broker, Point Grey Properties Inc., Vancouver,

(a) committed professional misconduct within the meaning of section 35(1)(d) of the *Real Estate Services Act*;

(b) failed to fulfill his responsibilities as a managing broker for the performance of the duties imposed on the brokerage by its licence within the meaning of section 6-2(b) of the *Real Estate Services Act*;

(c) contravened section 3-1(1)(a) and (b) and section 301(3) of the Council Rules in that he failed to ensure that the Accountant's Report was filed with the Real Estate Council by the prescribed date.

✍ **Penalty:** Point Grey Properties Inc. shall be suspended for thirty days from September 16, 2006 to October 15, 2006 inclusive, if Point Grey Properties Inc. files an Accountant's Report in a form acceptable to the Council by September 15, 2006. If Point Grey Properties Inc. does not file an Accountant's Report in a form acceptable to the Council by September 15, 2006, the brokerage's licence shall be cancelled effective September 16, 2006. In addition, as a condition of continued licensing, Point Grey Properties Inc. and Stephen Edward Le Sage are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$938.60.

✍ **Penalty:** Stephen Edward Le Sage, managing broker for Point Grey Properties Inc., shall be suspended from licensing under any category for thirty days from the date that the Accountant's Report is received by the Council if Point Grey Properties Inc. files an Accountant's Report in a form acceptable to the Council on or before September 15, 2006, in which case Mr. Le Sage is required to successfully complete the Broker's Licensing Course by January 1, 2007 as a condition of continued licensing as a managing broker. If Point Grey Properties Inc. does not file an Accountant's Report in a form acceptable to the Council by September 15, 2006, he shall be suspended from licensing under any category for sixty (60) days from September 16, 2006 to November 14, 2006 inclusive and his managing broker's licence shall be suspended for three (3) years commencing November 14, 2006, in which case Mr. Le Sage is required to successfully complete the Broker's Licensing Course prior to and as a condition of licensing as a managing broker. It is ordered that any application for a transfer or reinstatement of Mr. Le Sage's licence under the *Real Estate Services Act*, in any capacity, will not be considered without a qualification hearing unless an Accountant's Report and Winding Up Report for the brokerage in a form acceptable to the Council has been received by the Council at the time of Mr. Le Sage's application. Further, as a condition of continued licensing, Point Grey Properties Inc. and Stephen Edward Le Sage are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$938.60.

Extension: On September 12, 2006, Point Grey Properties Inc. and Mr. Le Sage requested an extension of time to file the Accountant's Report from September 15, 2006 to October 6, 2006 as a result of the brokerage accountants being unable to access the brokerage books, records and accounts.

The Discipline Hearing Committee was

willing to grant Point Grey Properties Inc. an extension in these circumstances provided that Point Grey Properties Inc. and Mr. Le Sage fully complied with all of their duties, including those imposed under the August 9, 2006 hearing decision. The Discipline Hearing Committee noted that it was advised at the July 11, 2006 hearing that Point Grey Properties Inc. and Mr. Le Sage were subject to an interim order of suspension in relation to a different matter before the Council and that any order in this matter was independent from and did not relieve Point Grey Properties Inc. and Mr. Le Sage from any other obligations they may have in that interim order matter, which has yet to be resolved.

Decision: The Discipline Hearing Committee decided that it would allow an extension of the September 15, 2006 deadline as set out in the August 9, 2006 hearing decision to October 6, 2006 and if Point Grey Properties Inc.:

(a) files an Accountant's Report in a form acceptable to the Council by October 6, 2006; and,

(b) pays the enforcement expenses as ordered in the August 9, 2006 hearing decision in the sum of \$938.60 by October 9, 2006; its licence, which was suspended on September 16, 2006 under the August 9, 2006 decision, shall remain suspended until October 15, 2006 inclusive.

In the event Point Grey Properties Inc. does not comply with the terms of this extension order, its licence, which became suspended effective September 16, 2006 under the August 9, 2006 decision, will be cancelled on the earlier of October 7, 2006 or October 10, 2006, as the case may be.

In the event Point Grey Properties Inc. complies with the terms of this extension order, Mr. Le Sage, whose licence became suspended under the August 9, 2006 decision as of September 16, 2006, shall

remain suspended until November 15, 2006 inclusive.

In the event Point Grey Properties Inc. does not comply with the terms of this extension order, Mr. Le Sage's licence as a managing broker will be cancelled on the earlier of October 7, 2006 or October 10, 2006, as the case may be, and he will have no right to reapply as a managing broker for three (3) years.

All other conditions of the August 9, 2006 decision remain the same.

➤ **Complaint:** Contravention of section 9.12 of Regulation 75/61 under the *Real Estate Act*/Negligence

■ **Issue:** John George Torsky, representative, who, while licensed with Money Saver Realty Ltd., Surrey, was negligent within the meaning of section 9.12 of Regulation 75/61 under the *Real Estate Act* in that he provided a letter verifying employment with a Money Saver Realty Ltd. franchise to a potential employee and identified himself in the letter as the manager/owner of the franchise in order to assist that person to obtain financing in connection with the purchase of property when he had not yet acquired the franchise rights and had not qualified his letter accordingly.

✍ **Penalty:** John George Torsky's licence was suspended for forty-five (45) days from September 27, 2006 to November 10, 2006 (inclusive) for negligence as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and John George Torsky, and a Consent Order was issued. In addition, as a condition of continued licensing, he is required to successfully complete the disciplinary education assignments applicable to Chapter 9 (*Professional Ethics*) of the Real Estate Trading Services

Licensing Course, and to pay enforcement expenses to the Council in the amount of \$500.00.

➤ **Complaint:** Contravention of section 9.12 of Regulation 75/61 under the *Real Estate Act*/Negligence

■ **Issue:** Jeannie May-Djun Kwan, representative, Global 1 Real Estate.Com Inc., Vancouver, was negligent within the meaning of section 9.12 of Regulation 75/61 under the *Real Estate Act* in that she:

(a) failed to confirm in writing to the buyers that she was a licensee although the buyers were informed verbally;

(b) placed herself in a conflict with the buyer's interest when she acted as a limited dual agent while she was also one of the owners of the subject property; and

(c) while in a conflict of interest, acted on behalf of a brokerage as a manager, when a dispute arose between herself as the owner of the property and the buyers.

✍ **Penalty:** Jeannie May-Djun Kwan's licence was suspended for twenty-one (21) days from August 9, 2006 to August 29, 2006 (inclusive) for negligence as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Jeannie May-Djun Kwan, and a Consent Order was issued. In addition, as a condition of continued licensing, she was required to successfully complete the disciplinary education assignments applicable to Chapter 2 (*Real Estate Services Act*) of the Real Estate Trading Services Licensing Course, to enroll in and attend the first available "Professionalism it Pays! Be Safe or Be Sued" or "Legal Update" course and to pay enforcement expenses to the Council in the amount of \$500.00.

➤ **Complaint:** Contravention of section 9.12 of Regulation 75/61 under the *Real Estate Act*/Negligence

■ **Issue:** Peter Bell Theeb Nejmelddeen, representative, who, while licensed with Envoy Realty Ltd. dba Sutton Premier Realty, Surrey, was negligent within the meaning of section 9.12 of Regulation 75/61 under the *Real Estate Act* in that he:

(a) failed to ensure that the buyer fully understood the ramifications of signing an addendum to the contract;

(b) failed to advise or recommend to the buyer that she obtain independent legal advice before signing the addendum;

(c) failed to ascertain and or disclose to the buyer that a Stop Work Order had been issued and posted on the subject property following an inspection which indicated that the deck had been enclosed and the interior altered without a valid building permit;

(d) failed to ascertain and/or disclose to the buyer that the Final Building Approval which had been issued for the property had been voided due to work being done without a valid building permit, that no Final Building Approval had been issued, and that such approval would not be issued without removal of the unauthorized work, or a rezoning;

(e) presented the buyer with a Final Building Approval for the wrong property;

(f) failed to advise the buyer to obtain a term of the contract requiring the sellers to complete and/or repair items as specified on a deficiency list forming a part of the contract;

(g) failed to advise the buyer to obtain a walkthrough inspection deficiency list clause allowing the buyer to inspect the property an agreed number of days prior to the completion date and to develop a deficiency list of items to be remedied by the sellers;

(h) failed to advise the buyer to obtain an appropriate deficiency holdback from the purchase price;

(i) failed to advise the buyer to obtain an appropriate builders lien holdback;

(j) failed to advise the buyer to obtain a term of the contract that the seller must have finished all work and delivered to the buyer by the completion date, an unconditional

municipal final building approval, or other evidence satisfactory to the buyer that construction was finished; and

(k) failed to ascertain all material facts with respect to the property in order to adequately protect the interests of the buyer.

✍ **Penalty:** Peter Bell Theeb Nejmelddeen's licence was suspended for twenty-one (21) days from September 20, 2006 to October 10, 2006 (inclusive). As a condition of continued licensing, Mr. Nejmelddeen is required to successfully complete the disciplinary education assignments applicable to Chapter 10 (Law of Contract) and 11 (Contracts for Real Estate Transactions) of the Real Estate Trading Services Licensing Course, enroll in and attend the next available "Legal Update" course and pay enforcement expenses to the Council in the amount of \$4,142.60.

➤ **Complaint:** Contravention of section 9.12 of Regulation 75/61 under the *Real Estate Act/Negligence*

■ **Issue:** Hardarshan Sandhu, representative, Global 1 Real Estate.Com Inc., Vancouver, was negligent within the meaning of section 9.12 of Regulation 75/61 under the *Real Estate Act* in that he:

(a) failed to advise the buyers prior to their entering into a Contract of Purchase and Sale of the subject property that a separate release would have to be executed by both principals to the contract in order for the funds on deposit with the brokerage to be released to the buyer; and

(b) failed to advise the buyers in writing of the co-listing representative's interest in the property.

Penalty: Hardarshan Sandhu's licence was suspended for ten (10) days from September 6, 2006 to September 15, 2006 (inclusive) for negligence as described above after an Agreed Statement of Facts, Proposed

Acceptance of Findings and Waiver was entered into between the Real Estate Council and Hardarshan Sandhu, and a Consent Order was issued. In addition, as a condition of continued licensing, he was required to successfully complete the disciplinary education assignments applicable to Chapter 2 (*Real Estate Services Act*) of the Real Estate Trading Services Licensing Course, to enroll in and attend the first available "Professionalism it Pays! Be Safe or Be Sued" or "Legal Update" course and to pay enforcement expenses to the Council in the amount of \$500.00.

➤ **Complaint:** Contravention of sections 9.12 and 9.16 of Regulation 75/61 under the *Real Estate Act/Negligence* and managing broker in active charge

■ **Issue:** Nanaimo Realty Co. Ltd. dba Royal LePage Nanaimo Realty, brokerage, Nanaimo, breached section 9.16 of Regulation 75/61 under the former *Real Estate Act* in that it failed to have a managing broker in active charge of the business of the brokerage.

■ **Issue:** Allan Joseph Lupton, managing broker, Nanaimo Realty Co. Ltd. dba Royal LePage Nanaimo Realty, Nanaimo, was negligent within the meaning of section 9.12 of Regulation 75/61 under the *Real Estate Act* in that he was not in active charge of the business of the brokerage with respect to a Contract of Purchase and Sale between a buyer and seller involving a licensee with Royal LePage Nanaimo Realty as a limited dual agent.

Penalty: Nanaimo Realty Co. Ltd. dba Royal LePage Nanaimo Realty was reprimanded for the breach as described above and required to pay enforcement expenses to the Council in the amount of \$2,978.30.

✍ **Penalty:** Allan Joseph Lupton's managing broker's licence was suspended for

seven (7) days from October 4, 2006 to October 10, 2006 (inclusive) for negligence as described above but he is immediately eligible to be licensed as an associate broker. In addition, as a condition of continued licensing, he is required to successfully complete the disciplinary education assignments applicable to Chapter 3 (Business Standards) of the Real Estate Trading Services Licensing Course, and enroll in and attend the first available "Professionalism it Pays! Be Safe or Be Sued" course.

➤ **Complaint:** Contravention of section 9.12 of Regulation 75/61 under the *Real Estate Act/Incompetence*

■ **Issue:** Helen Elizabeth Anne Chaplin, representative, Whistler Real Estate Company Limited, Whistler, and Phillip Cole Shuker, representative, Whistler Real Estate Company Limited, were incompetent within the meaning of section 9.12 of Regulation 75/61 under the *Real Estate Act* in that they breached their continuing duty of confidentiality to a seller client.

✍ **Penalty:** Helen Elizabeth Anne Chaplin and Phillip Cole Shuker were both reprimanded for incompetence as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council, Helen Elizabeth Anne Chaplin and Phillip Cole Shuker and a Consent Order was issued. In addition, as a condition of continued licensing, they both are required to successfully complete the disciplinary education assignments applicable to Chapter 9 (Professional Ethics) of the Real Estate Trading Services Licensing Course and they are each required to pay enforcement expenses to the Council in the amount of \$500.00.

➤ **Complaint:** Contravention of

sections 6(2)(b) and 35(1)(a) of the *Real Estate Services Act*, sections 7-7(1) and 3-1(3)(a) of the Council Rules under the *Real Estate Services Act/Professional misconduct*

■ **Issue:** Money Saver Realty Ltd., Surrey, contravened section 7-7(1) of the Council Rules and section 35(1)(a) of the *Real Estate Services Act* in that it failed to file an Accountant's Report with the Real Estate Council by the prescribed date.

■ **Issue:** Surinderjit Singh Rai, managing broker, Money Saver Realty Ltd., Surrey,

(a) contravened section 6(2)(b) of the *Real Estate Services Act* in that he failed to fulfill his responsibilities as a managing broker for the performance of the duties imposed on the brokerage by its licence;

(b) contravened section 3-1(3)(a) in that he failed to ensure that the Accountant's Report was filed with the Real Estate Council by the prescribed date; and

(c) committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*.

✍ **Penalty:** Money Saver Realty Ltd. was reprimanded for the contravention described above. The licence would have been suspended for (60) sixty days but for the fact that an acceptable Accountant's Report was received by August 15, 2006. In addition, as a condition of continued licensing, Money Saver Realty Ltd. and Surinderjit Singh Rai are jointly and severally liable to pay a fine in the amount of \$1,000 to the Council as they have previously received a letter of warning for failing to file an Accountant's Report. Further, Money Saver Realty Ltd. and Surinderjit Singh Rai are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,213.60.

✍ **Penalty:** Surinderjit Singh Rai, managing broker for Money Saver Realty Ltd.

was reprimanded for professional misconduct as described above. In addition, as a condition of continued licensing, Money Saver Realty and Surinderjit Singh Rai are jointly and severally liable to pay a fine in the amount of \$1,000 to the Council as they have previously received a letter of warning for failing to file an Accountant's Report. Further, Money Saver Realty Ltd. and Surinderjit Singh Rai are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,213.60.

➤ **Complaint:** Contravention of sections 28 and 35(1)(a) of the *Real Estate Services Act* and sections 6(2) and 3-1 of the Council Rules under the *Real Estate Services Act/Breach of Act or Rules, professional misconduct*

■ **Issue:** Benchmark Investments Group Ltd. dba Homelife Benchmark Realty Walnut Grove, brokerage, Langley, contravened section 28 of the *Real Estate Services Act* and thereby was in contravention of section 35(1)(a) of the *Real Estate Services Act* in that, in relation to an agreement for the acquisition and disposition of real estate, Homelife Benchmark Realty Walnut Grove received a deposit in respect of an agreement and, in contravention of section 28 of the *Real Estate Services Act*, paid the deposit from its brokerage trust account to the buyer without an agreement of the parties in writing allowing such payment.

David James Rishel, associate broker, who, while licensed with Benchmark Investment Group Ltd. dba Homelife Benchmark Realty Walnut Grove, Langley, as managing broker, contravened section 6(2)(b) and 6(2)(c) of the *Real Estate Services Act* and section 3-1 of the Council Rules thereby committing professional misconduct under section 35(1)(a) in that he:

(a) failed to fulfill his responsibilities as a managing broker for the performance of the

duties imposed on the brokerage by its licence within the meaning of section 6(2)(b) of the *Real Estate Services Act*;

(b) failed to fulfill his responsibilities for the control and conduct of the brokerage's real estate business, including supervision of the associate brokers and representatives who are licensed in relation to the brokerage, within the meaning of section 6(2)(c) of the *Real Estate Services Act*; and

(c) was in breach of his duties as managing broker as set out in section 3-1 of the Council Rules.

 **Penalty:** Benchmark Investments Group Ltd. dba Homelife Benchmark Realty Walnut Grove and David James Rishel were reprimanded. David James Rishel was further ordered that, as a condition of continued licensing as a managing broker, he successfully complete the disciplinary education assignment applicable to Chapter 2 (Mandatory Requirements Under the *Real Estate Services Act*) of the Broker's Licensing Course. Further, Benchmark Investments Group Ltd. dba Homelife Benchmark Realty Walnut Grove and David James Rishel were jointly and severally assessed enforcement expenses to be paid to the Council in the amount of \$5,960.20.

➤ **Complaint:** Contravention of sections 6(2)(b) and 35(1)(a) of the *Real Estate Services Act*, sections 7-7(1) and 3-1(3)(a) of the Council Rules under the *Real Estate Services Act*/Failure to file Accountant's Report and Professional misconduct

■ **Issue:** Sussex Group – Steve Sawyer Realty Ltd. dba Prudential Sussex – Steve Sawyer, Surrey, contravened section 7-7(1) of the Council Rules and section 35 of

the *Real Estate Services Act* in that it failed to file an Accountant's Report with the Real Estate Council by the prescribed date.

■ **Issue:** Stephen David Sawyer, managing broker, Sussex Group – Steve Sawyer Realty Ltd. dba Prudential Sussex Realty – Steve Sawyer,

(a) contravened section 6(2)(b) of the *Real Estate Services Act* in that he failed to fulfill his responsibilities as a managing broker for the performance of the duties imposed on the brokerage by its licence;

(b) contravened section 3-1(3)(a) of the Council Rules in that he failed to ensure that the Accountant's Report was filed with the Real Estate Council by the prescribed date; and

(c) committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*.

 **Penalty:** Sussex Group – Steve Sawyer Realty Ltd. dba Prudential Sussex Realty – Steve Sawyer was reprimanded for the contravention described above. The licence would have been suspended for (60) sixty days but for the fact that an acceptable Accountant's Report was received by August 15, 2006. In addition, as a condition of continued licensing, as Sussex Group – Steve Sawyer Realty Ltd. dba Prudential Sussex Realty – Steve Sawyer and Stephen David Sawyer are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,630.60.

 **Penalty:** Stephen David Sawyer, managing broker for Sussex Group – Steve Sawyer Realty Ltd. dba Prudential Sussex Realty – Steve Sawyer was reprimanded for professional misconduct as described above.

In addition, as a condition of continued licensing, Sussex Group – Steve Sawyer Realty Ltd. dba Prudential Sussex Realty – Steve Sawyer and Stephen David Sawyer are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,630.60.

➤ **Complaint:** Contravention of section 9.12 of Regulation 75/61 under the *Real Estate Act*/Negligence

■ **Issue:** Karen Sau Ngo Kam, managing broker, Global 1 Real Estate.Com Inc., Vancouver, was negligent within the meaning of section 9.12 of Regulation 75/61 under the *Real Estate Act* in that she:

(a) failed to ensure that a licensee was not in conflict with the buyers' interest when the licensee acted as a limited dual agent in a transaction where she was also one of the sellers of the property; and

(b) authorized the licensee to act on behalf of the brokerage in the dispute that arose between the licensee as a seller and the buyers.

 **Penalty:** Karen Sau Ngo Kam was reprimanded for negligence as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Karen Sau Ngo Kam, and a Consent Order was issued. In addition, as a condition of continued licensing, she is required to successfully complete the disciplinary education assignments applicable to Chapter 2 (Mandatory Requirements Under the *Real Estate Services Act*) of the Broker's Licensing Course and to pay enforcement expenses to the Council in the amount of \$250.00.