



# Report from Council

October 2007 Volume 43, No. 3

## Continuing Duty of Confidentiality

William Foster, a noted authority on agency suggests:

"The fiduciary relationship of broker and client persists until the agency agreement expires or the purpose of the agency has been accomplished (i.e. the transaction has completed). Therefore, where a broker has obtained an offer that has been accepted by the client the fiduciary relationship remains in effect until the transaction is completed or the agency agreement terminates.

However, even when an agency agreement and, thus, the fiduciary relationship between broker and client has been terminated, some fiduciary duties persist thereafter – thus, for example, on termination of an agency relationship, brokers cannot use confidential information acquired while representing a client for their own or a third party's benefit."

Two licensees were reprimanded by the Council for breaching a continuing duty of confidentiality to a seller they represented in the listing of the seller's property.

The listing had expired and a party commenced a lawsuit against the seller which was related to the subject property.

The lawyer acting for the plaintiff approached the licensees and requested that they provide affidavits containing information about the listing of the property.

The licensees claimed that the lawyer for the plaintiff made it clear to them that if they did not provide the affidavits voluntarily, he would either subpoena them as a witness to give evidence before the judge or he would obtain a court order pursuant to the Rules of Court compelling them to give their evidence.

The licensees provided the requested

affidavits as they believed that they had no choice in the matter.

The seller complained to the Council that the information in the affidavits was confidential. The Council found that there was a continuing duty of confidentiality on the part of the two licensees after the expiration of the agency relationship and that the licensees, by providing the affidavits, had breached their duty of confidentiality.

Licensees should be aware of the following guidelines with respect to the continuing duty of confidentiality:

1. Licensees should not volunteer to disclose confidential information about their clients at any time.

2. Before agreeing to provide any information to a lawyer or any other third party, the licensee should advise the lawyer or third party that they intend to seek the consent of their clients to the disclosure of the information.

3. The licensee should obtain the consent of their clients in writing. If the client is not prepared to consent to the disclosure of the information, the licensee should advise the lawyer or third party accordingly. The lawyer may then take legal steps to compel disclosure of the information either by issuing a subpoena to the licensee to attend a proceeding as a witness or by obtaining a court order pursuant to the Rules of Court compelling the licensee to give their evidence.

4. Licensees may wish to obtain their own legal advice as to whether the disclosure of information consented to by their clients may result in a possible claim against the licensee by another party.

5. Licensees should be aware that they are relieved from any duty of confidentiality owed to

a client when communicating with the Council or the Real Estate Errors and Omissions Insurance Corporation in regard to a complaint or claim by virtue of section 123 of the *Real Estate Services Act*, which states as follows:

### "Communications privileged

123(1) Subject to (2), all information supplied and all records and things produced to the real estate council, a hearing committee, the superintendent, the insurance corporation or the compensation fund corporation with respect to a licensee, a former licensee or an applicant for a licence are privileged to the same extent as if they were supplied or produced in proceedings in a court, and no action may be brought against a person as a consequence of the person having supplied or produced them.

(2) Subsection (1) does not apply to a person who supplied information or produced records or things maliciously."

6. Licensees should also be aware that when acting as a limited dual agent in a transaction where the parties to a contract have entered into a limited dual agency agreement, the agreement specifically modifies the duty of confidentiality

*Continued on next page...*

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STATISTICS  
(OCTOBER 2007)

REPRESENTATIVES: 14,042

ASSOCIATE BROKERS: 1,952

MANAGING BROKERS: 1,357

BROKERAGES: 1,395

#### Role of the Council

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

#### Report from Council

The *Report from Council* newsletter is published six times per year. Past issues can be found at [www.recbc.ca](http://www.recbc.ca)

#### Canada Post

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## A Note From the Chair

As the Council is required to produce an annual report as of June 30th of each year and file it within three months with the Ministry of Finance, the Council has decided to revise the way it publishes its annual statistical information. The annual statistics will now be published in the fall of each year to coincide with the publication of the annual report, which can be found on the Council's website at [www.recbc.ca](http://www.recbc.ca). Licensees may wish to review the annual report to learn more about the Council's operations and statutory role under the *Real Estate Services Act*.

On pages 4 and 5 of this Report, the details of the various aspects of the Council's operations over the past year are highlighted. You will note that the number of licensing course applicants

has dropped over the previous year but that the number of licensees continues to increase. In addition, the number of disciplinary actions continues to rise. This upward trend in disciplinary actions is concerning and, as a result, I urge licensees to always exercise their best judgment when working with clients. Consumers depend on your expertise and guidance. If you are ever in doubt, you should consult with your managing broker, consult the Licensee Practice Manual, or if necessary, refer the business to a licensee with expertise and knowledge in that area.

Speaking about the Council's website, I would point out that it contains a Licensee Search page where licensees can find licensing



Satnam Sidhu

information about themselves and other licensees. The Licensee Search Page provides individual licensee numbers, effective dates of licence issuance and the expiry dates of licences. This information is updated in real time as soon as licences are issued or renewed. It is a worthwhile tool which I encourage you to review.

On behalf of Council  
Satnam T. Sidhu, Chair

## Continuing Duty of Confidentiality (Continued from cover)

and provides that licensees have a duty to disclose information to both parties in a transaction, subject to three exceptions as follows:

(a) the brokerage will not disclose that the buyer/tenant is willing to pay a price or agree to terms other than those contained in the offer, or that the seller/landlord is willing to accept a price or terms other than those contained in the listing;

(b) the brokerage will not disclose the motivation of the buyer/tenant to buy or lease or the seller/landlord to sell or lease unless authorized in writing by the buyer/tenant or the seller/landlord;

(c) the brokerage will not disclose personal information, not otherwise necessarily disclosed in the transaction documentation, about the buyer/tenant or seller/landlord to the other party unless authorized in writing.

However the brokerage must disclose to the buyer/tenant defects about the physical condition of the property known to the brokerage.

If a licensee has any concerns about the continuing duty of confidentiality, they should contact the Real Estate Council at 604-683-9664, toll-free 1-877-683-9664 or email at [info@recbc.ca](mailto:info@recbc.ca).

## Important Changes to the Homeowner Protection Act

Licensees should be aware of a number of forthcoming amendments to the *Homeowner Protection Act*. The amendments will, among other things:

- provide a framework to strengthen licensing requirements for residential builders;

- require anyone wishing to build a home under the owner-builder exemption to meet more stringent criteria and pay a fee; and
- strengthen enforcement provisions, including compliance orders and penalties.

While the regulation bringing these changes into force has not yet been introduced, licensees should be aware that the changes are coming soon. For further information, please visit the Homeowner Protection Office website at [www.hpo.bc.ca](http://www.hpo.bc.ca)

## Office Closures

The Council office will be closed on November 12, 2007 for Remembrance Day, December 25, 2007 for Christmas Day, December 26, 2007 for Boxing Day and January 1, 2008 for New Year's Day.

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## A Reminder About Deposits

Licensees are reminded that section 3-2(2)(b) of the Council Rules requires licensees to immediately notify their managing broker if a deposit contemplated by an agreement has not been received. As well, section 3-1(4) of the Council Rules requires the managing broker to ensure that all parties to an agreement giving effect to a trade in real estate are immediately notified if:

a) a deposit contemplated by the agreement

that, if received, would be held by the related brokerage as a stakeholder under section 28 of the *Real Estate Services Act*, has not been received, or

b) a deposit cheque or other negotiable instrument that the brokerage received in respect of a deposit referred to in (a) above had not been honoured.

Section 3-1(5) of the Council Rules requires that a notice under section 3-1(4) of the Council

Rules must be given in writing or confirmed in writing. Failure to comply with these provisions has resulted in disciplinary action, including licence suspensions, being taken against licensees.

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

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## Additional Disclosure Under REDMA

The Superintendent of Real Estate has amended Policy Statements 14 and 15 which will take effect on November 1, 2007. The amended Policy Statements will require additional information to be included in new Disclosure Statements, and in Amendments to existing Disclosure Statements, that are submitted to the Superintendent of Real Estate for filing under the *Real Estate Development Marketing Act* on or

after November 1, 2007.

Policy Statement 14 will require additional disclosure with respect to development property that has not yet been completed (i.e., units marketed on a "pre-sale" basis). Policy Statement 15 will apply to all development property marketed under the *Real Estate Development Marketing Act*, whether completed or not, and will require additional disclosure with respect

to the developer's background and any conflict of interest.

Further information about disclosure requirements under the *Real Estate Development Marketing Act*, including a copy of the amended Policy Statements, is available on the Superintendent's website at [www.fic.gov.bc.ca](http://www.fic.gov.bc.ca). Follow the links to Real Estate > Information Bulletins.

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## Real Estate Foundation and Brokerage Trust Accounts

Brokerages can save themselves inconvenience and some expenses by following the simple procedures established to assist them to comply with Section 29 of the *Real Estate Services Act*.

Section 29 requires a real estate brokerage "to hold the interest in trust for the Real Estate Foundation" (the "Foundation") and "to cause the savings institution to pay interest to the Foundation in accordance with the Real Estate Services Regulations." Part 3 of the Regulations requires a brokerage to a) "instruct the savings institution to pay interest to the foundation, using the authorization form established by the Foundation;" and b) "to send a completed copy of the authorization form to the Foundation."

The Foundation maintains current Compensation Agreements with most savings institutions. These agreements specify the

rate of interest paid, method of calculating the gross interest and the remittance period and



THE REAL ESTATE  
FOUNDATION

process. These agreements also specify that the Foundation will cover the normal debits and credits of the brokerage trust account. Some fees

are not covered, e.g. stop payments, certification of cheques, charges for insufficient funds in the account, bank confirmations, and printing of cheques. Such fees are a cost of doing business to the brokerage.

The Foundation elects to cover these fees; the Act does not require it to do so. If a brokerage remits interest directly to the Foundation rather than have the savings institution do so, the amount remitted must be the gross interest. The Foundation does not have Compensation Agreements with several small savings institutions. Brokerage trust accounts on deposit at those institutions may have to pay gross interest to the Foundation.

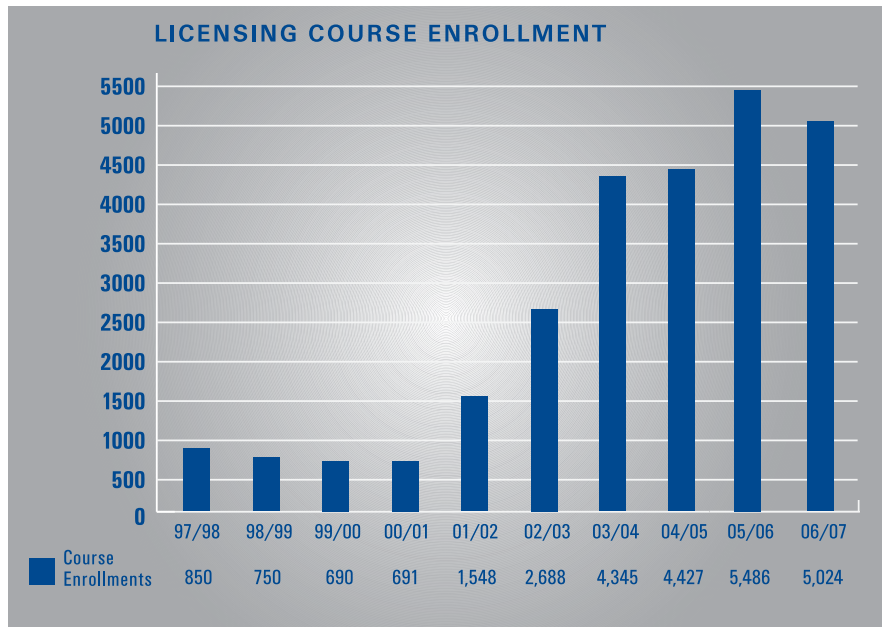
If a brokerage has questions regarding payment of interest on brokerage trust accounts to the Foundation, they should contact Tim Pringle at the Foundation at 604-688-6800.

## STATISTICS

These two pages contain the Council's annual statistics on licensing, compliance and disciplinary action taken.

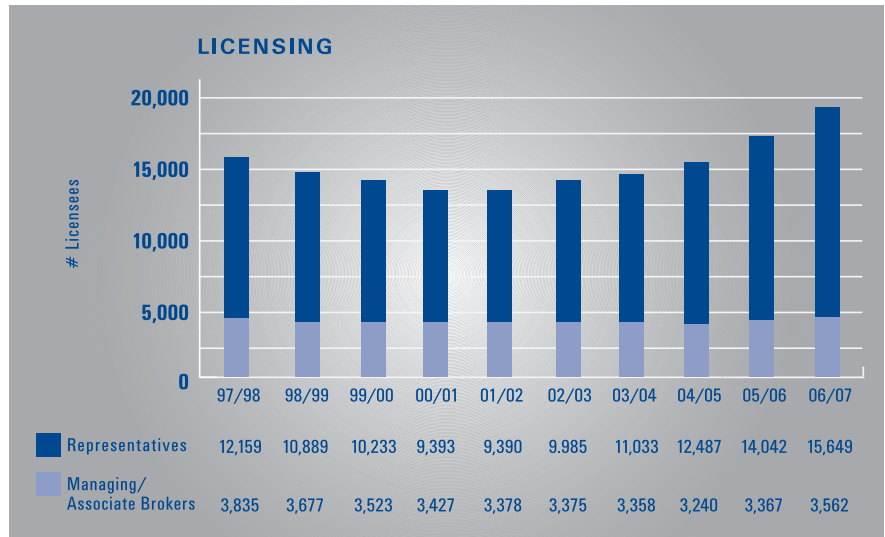
### Education

For the first time in six years, enrollments in the licensing courses (Trading Services, Rental Property Management and Strata Management) decreased slightly from the year prior. While the number is slightly lower, it still represents a significant number of individuals when compared with 1999-2001 as shown on this chart.



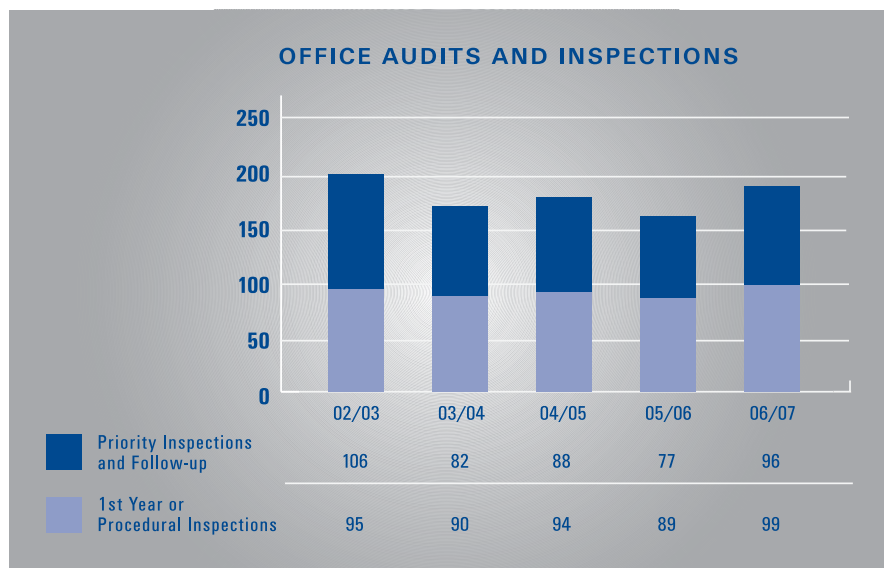
### Licensing

The figures in this chart indicate a sizable growth in the number of licensees in the province compared with last year. This is the fifth straight year that this has occurred and is close to the all time high number of licensees in the province seen in 1994 (20,100).



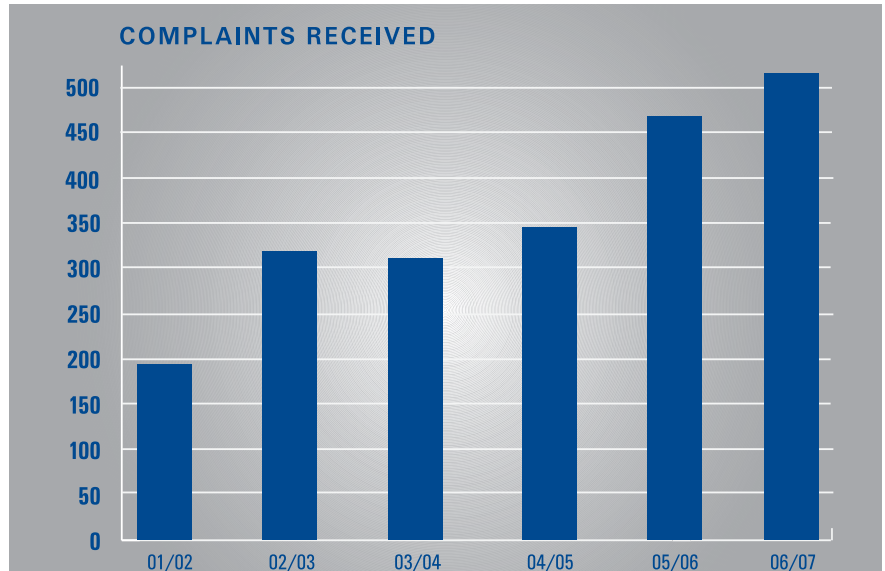
### Office and Records Inspection Program

The Council has been performing office and records inspections since 1967. The mandate of the Council is to ensure that all licensed brokerages in the province have proper controls in place to protect trust monies at all times. The objective of an office and records inspection is to provide constructive feedback to the brokerage by identifying any deficiencies in the office and records as required by the *Real Estate Services Act*. The legislative authority which allows the Council to perform an office and records inspection is found in the *Real Estate Services Act*. The Act is very broad and allows auditors access to any documents which may relate to the brokerage's dealings as a licensee.



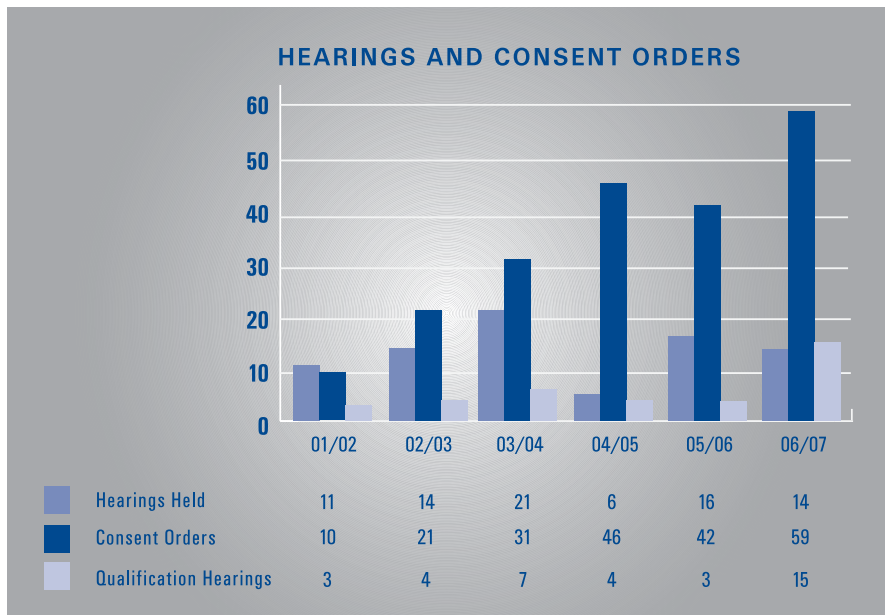
## Complaints Received

As shown in the chart, the number of complaints received at the Council increased to 543, another significant increase from the year prior. This increase is due in part to the active real estate market, but also the Council's increased regulatory responsibilities with respect to strata manager licensing.



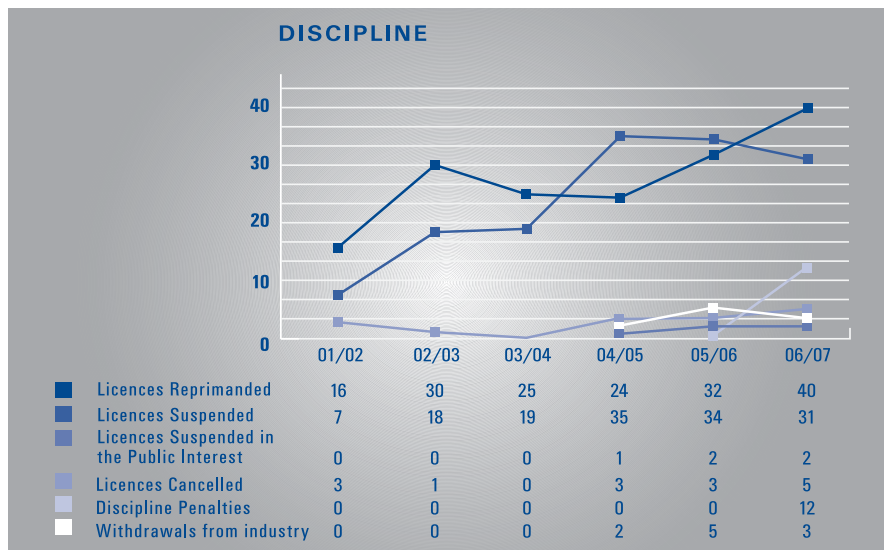
## Hearings and Consent Orders

While the number of hearings decreased compared with last year, the number of Consent Orders increased dramatically. Also of interest is the dramatic rise in the number of qualification hearings. Qualification hearings are held to determine an applicant's suitability to become licensed under the *Real Estate Services Act*.



## Discipline

This chart reflects the penalties agreed to by Consent Order Review Committees and Hearing Committees over the past seven years. The overall number of disciplinary penalties continues to increase as compared with previous years. In particular, the number of licence reprimands increased dramatically compared with last year while the number of licence suspensions, cancellations and suspensions in the public interest remained about the same. This chart now shows the number of withdrawals from the industry and discipline penalties. Withdrawals from the industry occur in situations where an individual requests that the Real Estate Council discontinue disciplinary proceedings against them as they have decided to permanently retire from real estate practice. Discipline penalties may be levied pursuant to the *Real Estate Services Act* in amounts up to \$20,000.



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## Notice of Licensee Resignation

Gurdip Singh Gill, while licensed as a managing broker with Heera Management Ltd., Langley, requested the Real Estate Council of British Columbia to discontinue disciplinary proceedings against him as he had decided to permanently retire from real estate practice. Mr. Gill was facing a disciplinary hearing into

his professional conduct and would have been required to appear before a hearing committee of the Real Estate Council to respond to these allegations.

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

licensed to act again, the Real Estate Council agreed with Mr. Gill's request. The lifetime ban on Mr. Gill's licensing under the *Real Estate Services Act* was effective as of June 22, 2007, although he surrendered his licence to the Real Estate Council on October 30, 2006.

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## Disciplinary Decisions

Since the August 2007 *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 6(2)(b) 35(1)(a) of the *Real Estate Services Act*, sections 3-1(1)(a) and (b), 3-1(3) and 7-7(1)(b) of the Council Rules/Professional misconduct, managing broker responsibilities, failure to file Accountant's Report

**Issue:** White Star Lodging Company Ltd. dba Sun Valley Strata Management, Big White, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening section 7-7(1)(b) of the Council Rules in that it failed to file an Accountant's Report with the Council by the prescribed date.

**Issue:** Steven Donald Cormack, managing broker, White Star Lodging Company Ltd. dba Sun Valley Strata Management, Big White, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening section 6(2)(b) of the *Real Estate Services Act* in that he failed to fulfill his responsibilities as managing broker for the performance of the duties imposed on the brokerage by its licence; and sections 3-1(1)(a) and (b), and 3-1(3) of the Council Rules in that he failed to ensure that the said Accountant's Report was filed with the Council by the prescribed date.

**Result:** White Star Lodging Company Ltd. dba Sun Valley Strata Management was suspended for sixty (60) days from September

27, 2007 to November 26, 2007 (inclusive) for the contravention described above. If the Accountant's Report is not received by November 26, 2007, then the licence of White Star Lodging Company Ltd. dba Sun Valley Strata Management shall be cancelled, effective November 27, 2007. In addition, as a condition of continued licensing, White Star Lodging Company Ltd. dba Sun Valley Strata Management and Steven Donald Cormack are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,288.60.

**Result:** Steven Donald Cormack was reprimanded for professional misconduct as described above. In addition, as a condition of continued licensing, Steven Donald Cormack and White Star Lodging Company Ltd. dba Sun Valley Strata Management are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,288.60.

**Complaint:** Contravention of section 35(1)(c) of the *Real Estate Services Act*/Professional misconduct

**Issue:** Kuldip Singh Sohal, representative, Royal Pacific Realty (Kingsway) Ltd., Vancouver, committed professional misconduct within the meaning of section 35(1)(c) of the *Real Estate Services Act* in that he, as buyer's agent in the purchase of the subject property, altered an accepted no subject contract to include the clause "The buyer wants home inspection before deposit the cheque in the Royal Pacific Realty (Kway)" in paragraph 3 of the Contract of Purchase and Sale dated May 9, 2006.

**Result:** Kuldip Singh Sohal was suspended for forty-five (45) days from September 26, 2007 to November 9, 2007 (inclusive) for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Kuldip Singh Sohal, and a Consent Order was issued. In addition, as a condition of continued licensing, he must successfully complete the disciplinary education assignments applicable to Chapter 2 (*Real Estate Services Act*), Chapter 9 (Professional Ethics) and Chapter 12 (Law of Agency) of the Real Estate Trading Services Licensing Course, and pay enforcement expenses to the Council in the amount of \$750.00.

**Complaint:** Contravention of section 35(1)(d) of the *Real Estate Services Act*, sections 3-2, 4-7 and 5-13 of the Council Rules/Professional misconduct, false advertising, licensee responsibility and disclosure

**Issue:** Peter David Byrnes, representative, Okanagan Realty Inc. dba Coldwell Banker Okanagan Realty, Penticton, who, while licensed with 611032 B.C. Ltd. dba Re/Max Front Street Realty, Penticton, committed professional misconduct within the meaning of section 35(1)(d) of the *Real Estate Services Act*, sections 3-2, 4-7 and 5-13 of the Council Rules in that as the listing representative in the sale of a property he (a) failed to ascertain a material latent defect regarding the subject property, in that appropriate municipal building permits or occupancy permits were not in place at the time of the transaction and the secondary residence on the property was non-conforming; and (b) published advertising that he knew or

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should have known contained false statements or misrepresentations concerning the subject property.

**Result:** Peter David Byrnes was suspended for fourteen (14) days from September 26, 2007 to October 9, 2007 (inclusive) for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Peter David Byrnes, and a Consent Order was issued. In addition, as a condition of continued licensing, he must successfully complete the disciplinary education assignment applicable to Chapter 2 (Real Estate Services Act) of the Real Estate Trading Services Licensing Course, enroll in and attend the first available CPE course "Professionalism It Pays! Be Safe or Be Sued" and "Legal Update" and, further, pay enforcement expenses to the Council in the amount of \$750.00.

**Complaint:** Contravention of section 35(1)(a) of the *Real Estate Services Act*/Professional misconduct

**Issue:** Ashok Bawa Joshi, representative, Tapestry Realty Ltd. dba Royal Group Tapestry Realty, Surrey, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he: (a) failed to act in the best interest of his client in failing to ensure that the contract of purchase and sale was subject to the buyer obtaining financing; and (b) failed to clarify what agency was being offered, or in the alternative, if no agency was offered, then failed to advise the buyer to seek independent advice.

**Result:** Ashok Bawa Joshi was suspended for fourteen (14) days from October 31, 2007 to November 13, 2007 (inclusive) for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Ashok Bawa Joshi and a Consent Order was issued. Further, Ashok Bawa Joshi must successfully complete the disciplinary education assignment applicable to Chapter 2 (*Real Estate Services Act*) and Chapter 12 (The Law of Agency) of the Real

Estate Trading Services Licensing Course and pay enforcement expenses to the Council in the amount of \$750.00.

**Complaint:** Contravention of section 35(1)(a) of the *Real Estate Services Act*, sections 3-3(f), (i) and (j), 5-10 and 5-13 of the Council Rules/ Professional misconduct, disclosure, conflict of interest

**Issue:** Tennyson Romero Haughton, representative, West Coast Realty Ltd. (WBlvd) dba Sutton Group West Coast Realty (WBlvd), Vancouver, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening sections 3-3(f), (i) and (j), 5-10 and 5-13 of the Council Rules in that he: (a) failed to properly disclose to the buyer the nature of his relationship with the seller or in the alternative provided trading services in a circumstance where to do so was to act in a conflict of interest; and (b) failed to disclose to the buyer a material latent defect in that he failed to disclose that work had been undertaken in the subject property for which he knew or ought to have known approvals were required and had not been secured.

**Result:** Tennyson Romero Haughton was suspended for fourteen (14) days from October 24, 2007 to November 6, 2007 (inclusive) for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Tennyson Romero Haughton and a Consent Order was issued. Further, Mr. Haughton is to successfully complete the disciplinary education assignment applicable to Chapter 2 (The Real Estate Services Act) of the Real Estate Trading Services Licensing Course, to enroll in and attend the first available CPE course "What Brokerages and REALTORS Need to Know About Agency" and either "Professionalism It Pays! Be Safe or Be Sued" or "Legal Update" and pay enforcement expenses to the Council in the amount of \$750.00.

**Complaint:** Contravention of section 35(1)(a) of the *Real Estate Services Act*, sections 3-1(3)(b) and 7-7(1)(b) of the Council Rules/Professional

misconduct, failure to file Accountant's Report

**Issue:** OHR Springs Management Ltd., Whistler, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening section 7-7(1)(b) of the Council Rules in that it failed to file an Accountant's Report with the Council by the prescribed date.

**Issue:** Ian Robert Lowe, managing broker, OHR Springs Management Ltd., Whistler, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening section 3-1(3)(b) 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:** OHR Springs Management Ltd. was reprimanded for the contravention described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and OHR Springs Management Ltd., and a Consent Order was issued. In addition, as a condition of continued licensing, OHR Springs Management Ltd. and Ian Robert Lowe are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00.

**Result:** Ian Robert Lowe was reprimanded for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Ian Robert Lowe, and a Consent Order was issued. In addition, as a condition of continued licensing, Ian Robert Lowe and OHR Springs Management Ltd. are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00.

**Complaint:** Contravention of sections 35(1)(a), 35(1)(d), and 7(5)(a) of the *Real Estate Services Act*, section 3-1(1) and 3-1(3)(b) of the Council Rules/Professional misconduct, provision of real estate services by unlicensed representative, managing broker responsibilities

**Issue:** Pemberton Holmes Ltd., Victoria, brokerage, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that it permitted an unlicensed representative to provide rental property management services on behalf of the brokerage from on or about December 5, 2005 until on or about March 26, 2007, contrary to section 7(5)(a) (provision of real estate services by an unlicensed representative) of the *Real Estate Services Act*.

**Issue:** Michael Philip Andrew Holmes, managing broker, Pemberton Holmes Ltd., Victoria, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he failed to follow up sufficiently in order to ensure that an unlicensed representative did not provide rental property management services on behalf of the brokerage from on or about December 5, 2005 until on or about March 26, 2007, without being licensed contrary to section 7(5)(a) (provision of real estate services by an unlicensed representative) of the *Real Estate Services Act*, and section 3-1(1) and 3-1(3)(b) of the Council Rules (managing broker responsibilities).

**Result:** Pemberton Holmes Ltd. was reprimanded for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Pemberton Holmes Ltd. and a Consent Order was issued. Further, Pemberton Holmes Ltd. and Michael Philip Andrew Holmes are jointly and severally liable

to pay enforcement expenses to the Council in the amount of \$750.00.

**Result:** Michael Philip Andrew Holmes was reprimanded for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Michael Philip Andrew Holmes and a Consent Order was issued. Further, Michael Philip Andrew Holmes and Pemberton Holmes Ltd. are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00.

**Complaint:** Contravention of section 35(1)(a) and 35(1)(d) of the *Real Estate Services Act*, section 3-2(2)(b) of the Council Rules/Professional misconduct, incompetence, licensee responsibility

**Issue:** Rusty Lloyd Earl Franke, representative, Eric Putoto & Co. Platinum Realty Inc., Kamloops, committed professional misconduct within the meaning of section 35(1)(d) of the *Real Estate Services Act* in that he failed to immediately advise the managing broker that the deposit had not been received from the buyer within the five business days of acceptance of the contract, in accordance with section 3-2(2)(b) of the Council Rules.

**Result:** Rusty Lloyd Earl Franke was reprimanded for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings

and Waiver was entered into between the Real Estate Council and Rusty Lloyd Earl Franke and a Consent Order was issued. Further, as a condition of continued licensing, Rusty Lloyd Earl Franke must successfully complete the disciplinary education assignment applicable to Chapter 2 (*Real Estate Services Act*) and pay enforcement expenses to the Council in the amount of \$750.00.

**Complaint:** Contravention of section 35(1)(a) of the *Real Estate Services Act* and section 7-7(1)(b) of the Council Rules /Professional misconduct, failure to file Accountant's Report

**Issue:** Max Wright Real Estate Corporation dba Sotheby's International Realty Canada, Vancouver, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening section 7-7(1)(b) of the Council Rules in that it failed to file an Accountant's Report with the Council by the prescribed date.

**Result:** Max Wright Real Estate Corporation dba Sotheby's International Realty Canada was reprimanded for the contravention described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Max Wright Real Estate Corporation dba Sotheby's International Realty Canada, and a Consent Order was issued. In addition, Max Wright Real Estate Corporation dba Sotheby's International Realty Canada shall pay enforcement expenses to the Council in the amount of \$750.00.

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

Real Estate Council of British Columbia  
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