

# Report from Council

## Is There a Difference Between "Commercial Leasing" and "Residential Rentals"?

### Distinguishing Between Rental Property Management Services and Trading Services

There may be a difference in terminology used by the industry, but a person who is licensed by the Council to provide either trading services or rental property management services is able to assist a commercial or residential landlord to find a tenant, including performing any of the activities in the definition of trading services in relation to the rental of the real estate.

*"trading services" means any of the following services provided to or on behalf of a party to a trade in real estate:*

- (a) advising on the appropriate price for the real estate;*
- (b) making representations about the real estate;*
- (c) finding the real estate for a party to acquire;*
- (d) finding a party to acquire the real estate;*
- (e) showing the real estate;*
- (f) negotiating the price of the real estate or the terms of the trade in real estate;*
- (g) presenting offers to dispose of or acquire the real estate;*
- (h) receiving deposit money paid in respect of the real estate"*

Where rental property management services differ from trading services is in the activities identified in (b) and (c) of the rental property management services definition:

*"rental property management services" means any of the following services provided to or on behalf of an owner of rental real estate:*

- (a) trading services in relation to the rental of the real estate;*
- (b) collecting rents or security deposits for the use of the real estate;*
- (c) managing the real estate on behalf of the owner by
  - (i) making payments to third parties,*
  - (ii) negotiating or entering into contracts,*
  - (iii) supervising employees or contractors hired or engaged by the owner, or*
  - (iv) managing landlord and tenant matters"**

These activities generally apply to the ongoing management of the real estate, and to ongoing matters between the



*Those who are licensed to provide only trading services may not provide any other services defined as "rental property management services".*

landlord and the tenant. Those who are licensed to provide only trading services may not provide any of those additional services.

For further information, please contact the Council office at 604-683-9664, toll-free 1-877-683-9664 or email [info@recbc.ca](mailto:info@recbc.ca). ■

This Issue: >

- Is There a Difference Between "Commercial Leasing" and "Residential Rentals"?
- Disclosure of Remuneration

- Further Information about Obtaining Strata Documents
- Statistics
- Disciplinary Decisions

# A Note from the Chair



William R. Brown,  
Chair

I'm sure everyone will agree that the weather this past summer has been some of the best in recent memory. The great weather, combined with record low interest rates, no doubt has had a positive effect on sales activity across the province.

The Council's annual statistics are included later in this Report. As you will see, despite a significant decline in licensing course enrollments, the overall number of licensees in the province declined only moderately and currently sits around 19,400. At the same time, however, the number of complaints received by the Council increased for the fifth year in a row for a new all-time high of 574. This increase is reflected in the high number of disciplinary hearings and consent orders entered into by the Council again this year and can also be seen in the rather large disciplinary section contained in this Report.

It has been almost one year since the Council began licensing Personal Real Estate Corporations (PRECs) and, to date, the Council has licensed 255 PRECs across all licensing categories. It is anticipated that, as market conditions improve, more licensees will license

PRECs to fit their financial situation. Further information about PREC licensing can be found on the Council's website at [www.recbc.ca](http://www.recbc.ca).

The August *Report from Council* newsletter contained important information about changes to the Relicensing Education Program (REP). In particular, the course requirements for the second cycle have changed to eliminate the elective course for most licence categories. Further information can be found on the Council's website at [www.recbc.ca/licensee/rep.htm](http://www.recbc.ca/licensee/rep.htm).

Finally, I want to remind all managing brokers that the Brokerage Standards Manual is available on the Council's website in both a printable and online dynamic searchable version. Managing brokers should ensure that they familiarize themselves with the content of this manual in order that they may operate their brokerages in accordance with the *Real Estate Services Act*.

On behalf of the Council,

**William R. Brown**  
Chair

## Office Closures

The Council office will be closed on **Wednesday, November 11, 2009** for Remembrance Day.

900-750 West Pender Street  
Vancouver, BC, Canada V6C 2T8  
Tel 604-683-9664  
Toll-free 1-877-683-9664  
Fax 604-683-9017  
[info@recbc.ca](mailto:info@recbc.ca)  
[www.recbc.ca](http://www.recbc.ca)

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

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

### COUNCIL MEMBERS

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Marshall Cowe  
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John Nagy  
Patrick O'Donnell  
Ann Petrone  
W. B. (Bill) Phillips  
Bruce Turner  
Liz Tutt  
Michael Ziegler

### STATISTICS

October 2009

Representatives: 16,306

Associate Brokers: 1,776

Managing Brokers: 1,326

Total Licensees: 19,408

Brokerages (including branch offices  
and sole proprietors): 1,397

### 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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# Disclosure of Remuneration



Section 5-11 of the Council Rules requires that a licensee discloses in writing to the licensee's client all remuneration received or anticipated to be received from anyone other than the licensee's client. The term 'remuneration' is defined in the *Real Estate Services Act* to include "any form of remuneration, including any commission, fee, gain or reward, whether the remuneration is received, or is to be received, directly or indirectly". A client is defined in the Council Rules as "the principal who has engaged the licensee to provide real estate services to or on behalf of the principal". A licensee must disclose to their clients the source and amount of the remuneration, or, if the amount is not known, the likely amount or the method of calculation.

The amount of remuneration that must be disclosed is the remuneration to be received by the brokerage because it is the brokerage that is the agent that has contracted to provide the services. Where a brokerage is acting only as the buyer's agent, and that brokerage's remuneration is received from the listing brokerage, the source of the remuneration is the listing brokerage, and the amount to be disclosed to the buyer client is the total amount being offered by the listing brokerage. Where the brokerage is acting as a dual agent, whether through one licensee working with both clients or

separate licensees working with the seller and buyer, the source of the remuneration is typically the seller (through the brokerage's listing contract) and the total amount payable to the brokerage is what must be disclosed to the buyer. Licensees may use the Disclosure of Remuneration (Trading Services) form available on the Council's website at [www.recbc.ca](http://www.recbc.ca) or any form of the licensee's choosing so long as it satisfies the disclosure requirements.

If the person to whom the licensee is providing real estate services is not a client, i.e. a customer (an individual with whom there is no agency relationship), there is no obligation to disclose the amount of remuneration to that person, but the licensee is required to disclose to this customer if their related brokerage will be receiving remuneration from any other person in relation to the same trade in real estate. For example, if a licensee/brokerage has a property listed for sale and a buyer, being

treated as a customer, wishes the licensee to prepare an offer on the buyer's behalf to purchase the property, the licensee has an obligation to disclose to that buyer that they are the agent for the seller and they are being paid by the seller for their services. They do not have to disclose the amount of that remuneration. This type of disclosure to a customer may be verbal.

It is, therefore, very important for licensees to understand the nature of their relationship with those to whom they provide real estate services because that relationship will determine what must be disclosed to whom.

Questions respecting disclosure of remuneration may be directed to [info@recbc.ca](mailto:info@recbc.ca), or by phoning the Council at 604-683-9664 or toll free 1-877-683-9664. ■

## Important!

The requirement to disclose remuneration that is not being paid directly by the client applies to trading services, rental property management services and strata management services. The Council has developed disclosure forms for these categories of service that are available on the Council's website at [www.recbc.ca](http://www.recbc.ca). Licensees may use the disclosure forms developed by the Council or any form of the licensee's choosing so long as it satisfies the disclosure requirements outlined in the article on this page.

## Further Information about Obtaining Strata Documents

The August 2009 *Report from Council* newsletter contained an article entitled 'Obtaining Strata Documents'. This article stated, in part,

*"When considering the documents produced by a strata corporation and desired by a prospective buyer, it is necessary to understand what documents a buyer is entitled to receive. Under the Strata Property Act, the only document a buyer is entitled to obtain is the Form B."*

This statement was made in the context of explaining what documents a prospective buyer would want to receive from a strata corporation prior to a purchase.

**Additionally, however, once a buyer has entered into a Contract of Purchase and Sale, before the sale completes, the purchaser is also entitled to request a Form F.**

Section 115 of the *Strata Property Act* also entitles a purchaser, or a person authorized by a purchaser, to obtain a Certificate of Payment (a Form F), which must be provided if

- (a) the owner does not owe money to the strata corporation, or
- (b) the owner does owe money but
  - (i) the money claimed by the strata corporation has been paid into court, or

- to the strata corporation in trust, or
- (ii) arrangements satisfactory to the strata corporation have been made to pay the money owing.

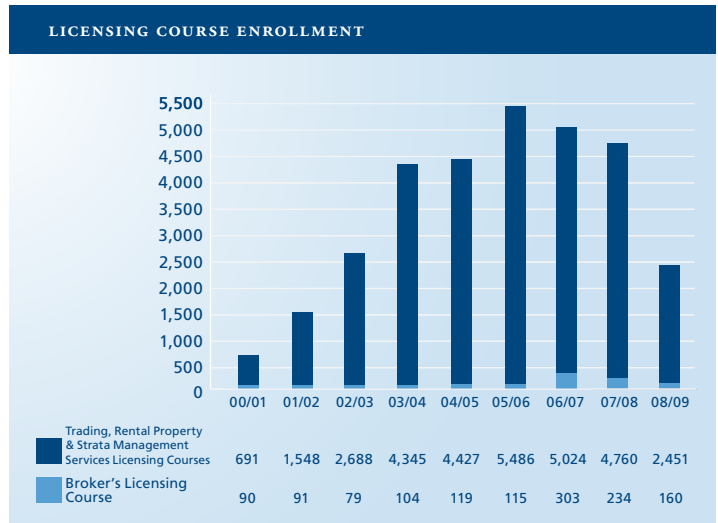
The Form F is typically requested from the strata corporation, or the brokerage providing strata management services to the strata corporation, by a lawyer or notary public acting on behalf of either the buyer or seller with respect to the conveyance.

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

# Economic downturn results in a dramatic decline in course enrollment but complaints and discipline activity remain active.

## Education

This past year saw a marked decline in the number of enrollments in the licensing courses (Trading Services, Rental Property Management and Strata Management). The number of course enrollments dropped to 2,451 from 4,760 the year prior. The number of registrations in the Broker's Licensing Course also declined from 234 to 160 this past year. It is interesting to note that the second quarter of 2009, however, saw an increase in the number of unit sales in the province and, as a result, the number of licensing course registrations began to increase as well, albeit not enough to offset the significant decline when compared with last year.



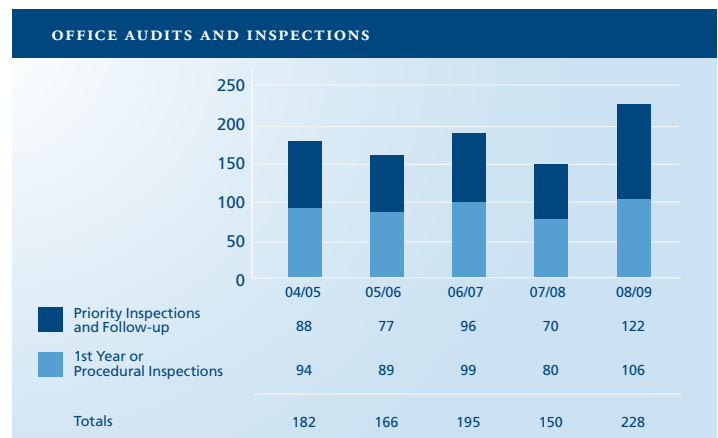
## Licensing

The number of licensees in the province at the Council's year-end decreased from the all-time high of 20,149 (May 2008) to 19,342 licensees. While this is a decrease of some 800 licensees, it is not as dramatic of a decrease as seen in the previous decline cycle of licensees that started in 1994. As noted, the second quarter of 2009 saw a significant slowdown in the number of licensees leaving the business combined with a steady inflow of new licensees.



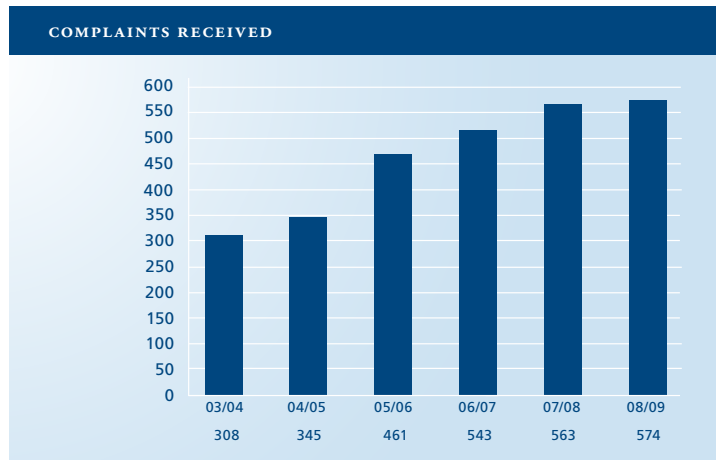
## Office Audits and Inspections

The Council performs office and records inspections 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 number of 1st year procedural and priority inspections conducted increased in 2008/09 when compared with previous years and showed a significant increase over last year, due in large part to the Council filling vacant staff auditor/investigator positions.



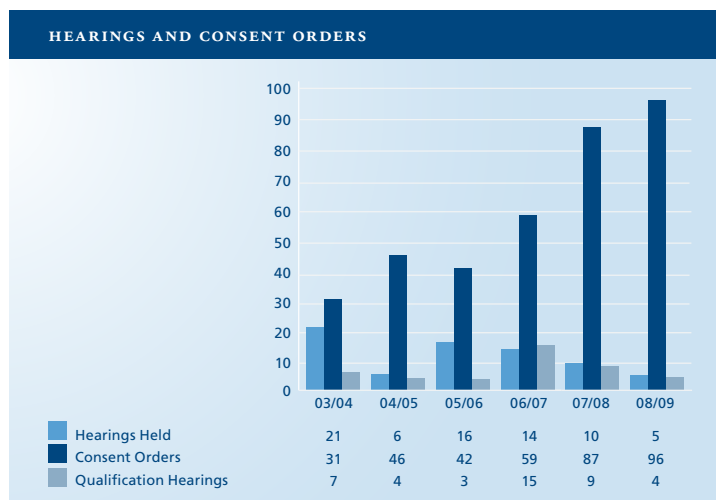
### Complaints Received

The number of complaints received at the Council office for the year ending June 30, 2009 increased to 574. This is the fifth year in a row that the number has increased and is likely a reflection of the active real estate market over the past several years, as well as greater consumer awareness of the role of the Real Estate Council.



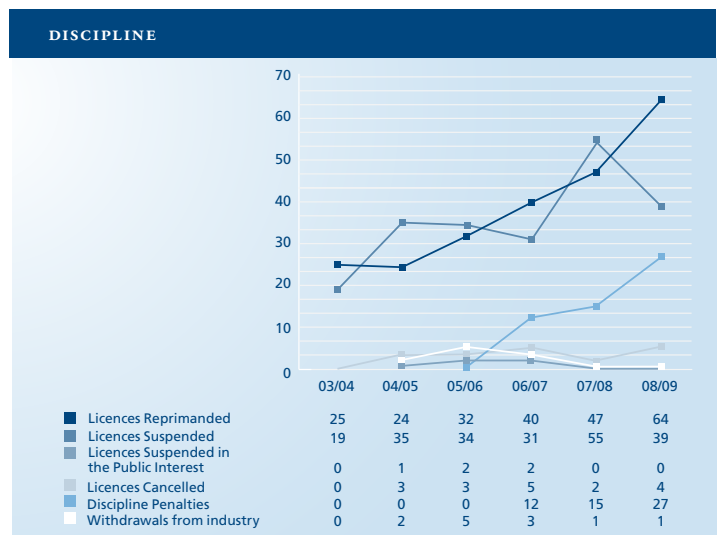
### Hearings and Consent Orders

The number of Consent Orders continued to increase in 2008/09 with 96 orders issued, an increase of nine compared with 2007/08. The Council held five formal hearings and four qualification hearings during this past year.



### Discipline

This chart reflects the penalties agreed to by Consent Order Review Committees and Hearing Committees over the past several years. The number of licence reprimands increased significantly over last year while the number of licence suspension issued were down slightly. The number of licence cancellations increased, along with a significant increase in the number of discipline penalties (fines) levied. This chart also includes the number of withdrawals from the industry. Withdrawals from the industry occur in situations where a licensee requests that the Real Estate Council discontinue disciplinary proceedings against them as the licensee has decided to permanently retire from real estate practice.



## Disciplinary Decisions

Since the August 2009 *Report from Council* newsletter, the following actions have been taken as a result of disciplinary hearings and Consent Orders conducted by the Council.

### Carrie Frances Stephenson

**ISSUE:** Carrie Frances Stephenson, currently unlicensed, while licensed as a managing broker with Paris Realty Ltd. dba Royal LePage Fraser Valley–Aldergrove, Abbotsford, entered into a Consent Order with the Council in which she consented to an Order that she: (a) committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that as managing broker for Royal LePage Fraser Valley–Aldergrove she: (i) failed to ensure that the brokerage maintained proper and up to date books, accounts and other records, in accordance with section 25 of the *Real Estate Services Act* and sections 3-1(3)(a), 8-1, 8-2, and 8-3 of the Council Rules; (ii) permitted the sum of \$48,075.64 to be withdrawn from the rental management services trust account, contrary to section 30 of the *Real Estate Services Act*; (iii) failed to ensure that remuneration paid to other brokerages was paid from the brokerage trust account, as required by section 31 of the *Real Estate Services Act*; (iv) failed to ensure that the rental property management agreements of the brokerage contained a provision as to how security deposits, pet damage deposits and other deposits were to be dealt with and also a provision respecting the use and disclosure of personal information, as required by section 5-1 of the Council Rules; (v) failed to ensure that the strata management written agreements contained provisions respecting the use and disclosure of personal information with respect to the strata corporation for the use and disclosure of personal information respecting owners who are members of the strata corporation, an indication of each type of trust account held on behalf of the client, and the authority to transfer between client trust accounts; (vi) failed to ensure that there was a written disclosure to the buyer as to the source and amount of the remuneration that was

received by the brokerage and sales representatives in trade files 270001, 270019, and 270026; and (vii) failed to ensure that she was actively engaged in the management of the said brokerage and that the said business of the brokerage was carried on competently and in accordance with the Act, regulations, rules and/or by-laws as required by section 3-1 of the Council Rules.

**E. & J. A.'s Complaint:** (b) Ms. Stephenson committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*: (i) by contravening section 3-3(1)(a) and (f) and section 3-4 of the Council Rules in that she failed to disclose all known material information to the A's, such as informing them of vacancies and/or ongoing rent shortages from the tenants in the subject properties; (ii) by contravening section 35(1)(d) of the Act and section 3-4 of the Council Rules by failing to ensure that the records requested by the said owners were provided in the required time frame, in accordance with sections 8-6(3) and (4) of the Council Rules; (iii) by contravening section 35(1)(d) of the Act and section 3-4 of the Council Rules in that she failed to ensure that a completed monthly report of the rental monies was provided to the said owners in a timely manner for the said properties; (iv) by contravening section 35(1)(d) of the Act and section 3-4 of the Council Rules in that she failed to account to the said owners whether any rents were received for the 46A Avenue property for the months of August, September, October, November, December 2007 and January 2008; and (v) by contravening section 37(4) of the Act and/or section 2-19 of the Council Rules in that she refused to provide information to the Council and/or failed to respond promptly in writing to the Council's enquiries concerning the complaints against her by the A's.

**L.P.'s Complaint:** (c) Ms. Stephenson committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*: (i) by contravening section 3-3(1)(a) of the Council

Rules by failing to perform a property condition inspection with the tenant, in accordance with sections 23 and 24 of the *Residential Tenancy Act*; (ii) by contravening section 3-4 of the Council Rules by failing to provide and maintain the said premises in a reasonable state of repair as required by the provisions of the residential tenancy agreement and in failing to address the concerns of the said tenant in a timely manner; and (iii) by contravening section 37(4) of the Act and/or section 2-19 of the Council Rules in that she refused to provide information to the Council and/or failed to respond promptly in writing to the Council's enquiry concerning the complaints against her by the said tenant.

**M.O.'s Complaint:** (d) Ms. Stephenson committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* (i) by contravening section 3-4 of the Council Rules by failing to ensure that rental monies were provided to the said owner in a timely manner; (ii) by contravening section 3-4 of the Council Rules in that she failed to ensure that a tenant's security deposit in the amount of \$500.00 was provided to the owner in a timely manner; and (iii) by contravening section 37(4) of the Act and/or section 2-19 of the Council Rules in that she refused to provide information to the Council and/or failed to respond promptly in writing to Council's enquiries concerning the complaint against her by M.O.

**R.W.'s Complaint:** (e) Ms. Stephenson committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*: (i) by contravening section 35(1)(d) of the Act in that she failed to ensure all monies received by the brokerage from a previous management company were promptly paid into the trust account of the brokerage, as required by section 27(1) and (2) of the Act; (ii) by contravening section 3-3(1)(a) and/or section 3-4 of the Council Rules in that she: 1) failed to pay invoices issued to the strata corporation in a timely manner; 2) failed to ensure that the brokerage maintained separate trust accounts and

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## Disciplinary Decisions, *cont'd*

that the strata corporation maintained a separate trust account for the contingency reserve funds for the strata corporation; 3) failed to ensure that the records requested by the strata corporation were provided in accordance with section 8-7.1(3) of the Council Rules; 4) failed to respond to enquiries by the strata corporation in a timely manner; and (iii) by contravening section 37(4) of the Act and/or section 2-19 of the Council Rules in that she refused to provide information to the Council and/or failed to respond promptly to enquiries by the Council concerning the complaint of the strata corporation.

**J. & E. W.'s Complaint:** (f) Ms. Stephenson committed professional misconduct within the meaning of section 35(1) (d) of the Act: (i) by contravening section 3-4 of the Council Rules in that she collected rental income and damage deposits from December 15 to December 31, 2007 and rental income for January and February of 2008 for the said property and failed to pay same to the W's or provide an accounting to them in a timely manner; and (ii) by contravening section 37(4) of the Act and/or section 2-19 of the Council Rules in that she refused to provide information to the Council and/or failed to respond promptly in writing to the enquiries of the Council concerning the complaint against her by the W's.

**M.B.'s Complaint:** (g) Ms. Stephenson committed professional misconduct within the meaning of section 35(1)(a) of the Act: (i) by contravening section 3-3(1) of the Council Rules by failing to keep the said clients informed of ongoing rent shortages from the tenants in the basement of the subject property; (ii) by contravening section 3-4 of the Council Rules by failing to account to the client on a monthly or regular basis with respect to all monies received or disbursed on behalf of the client with respect to the subject property; and (iii) by contravening section 37(4) of the Act and/or section 2-19 of the Council Rules in that she refused to provide information to the Council and/or failed to respond promptly to the Council's enquiries in writing with respect to the complaints of M.B.

**T.N.'s Complaint:** (h) Ms. Stephenson committed professional misconduct with-

in the meaning of section 35(1)(a) of the *Real Estate Services Act*: (i) by contravening sections 3-3(1)(a) and 3-4 of the Council Rules in that she: 1) failed to advise the said owners that there had been no renters for the property between October 12, 2007 and January 31, 2008; 2) failed to communicate with the said owners when they attempted to contact her; 3) failed to return the keys to the said property to the owners after they terminated her management services; and (ii) by contravening section 37(4) of the Act and/or section 2-19 of the Council Rules in that she refused to provide information to the Council and/or failed to respond promptly to the Council's enquiries in writing with respect to the complaints of T.N.

**RESULT:** Carrie Frances Stephenson will not apply to be licensed as a managing broker for five (5) years or until July 8, 2014 and any application for licensing as a managing broker will be subject to Ms. Stephenson successfully completing the Broker's Licensing Course and examination. Ms. Stephenson will not apply to be licensed as an associate broker or representative for trading, rental property management or strata management for a period of one (1) year or until July 8, 2010. Ms. Stephenson was ordered to successfully complete the disciplinary education assignments applicable to Chapter 2 (Mandatory Requirements Under The *Real Estate Services Act*) of the Broker's Licensing Course, and to enrol in and attend the first available CPE course "What Brokerages and REALTORS Need to Know About Agency". In addition, if Ms. Stephenson intends to become licensed as a managing broker, associate broker, or representative for rental property management and/or strata management, she must also successfully complete the Supplemental Rental Property Management Course and examination or the Supplemental Strata Management Course and examination or both as a condition of licensing, whichever the case may be. Further, Ms. Stephenson was ordered to pay enforcement expenses to the Council in the amount of \$1,000.00.

### Omar Mohammad Sharif

**ISSUE:** Omar Mohammad Sharif, currently unlicensed, while licensed as a representative with Pacific Place – Arc Realty

Ltd., Vancouver, entered into a Consent Order with the Council in which he consented to an Order that he committed professional misconduct within the meaning of section 35(1)(c) [deceptive dealing] of the *Real Estate Services Act* in that he, as the selling agent and second mortgagee in the purchase and sale of property on xxx4 Austrey Avenue, Vancouver, BC ("Austrey Avenue") from K ("Seller") to R ("Buyer") by way of a Contract of Purchase and Sale dated June 1, 2006 ("Contract"): (i) failed to act in the best interests of his client, the Buyer, and failed to act with reasonable care and skill in accordance with his duties as a selling agent, and without restricting the generality of the foregoing, failed to advise the Buyer as to the property's recent transactional history, contrary to sections 3-3(1)(a) and (f), and 3-4 of the Council Rules; (ii) failed to take reasonable steps to avoid a conflict of interest and offered agency representation to the Buyer in her purchase of the Austrey Avenue Property while having earlier acted for the Seller in her purchase of the Austrey Avenue Property, while holding the Seller's second mortgage and while agreeing to help finance the Buyer's purchase, when it was inappropriate to do so, contrary to section 3-3(1)(i) of the Council Rules; (iii) failed to promptly disclose to the Buyer, in writing, remuneration as a result of providing real estate services, in accordance with section 5-11 of the Council Rules, and failed to promptly provide the original or a copy of this disclosure to his managing broker, in accordance with section 3-2(1)(a) of the Council Rules; and, (iv) failed to keep his managing broker informed of the real estate services being provided, and the activities being performed by him on behalf of the brokerage, contrary to section 3-2(2)(a) of the Council Rules. Further, he committed professional misconduct within the meaning of section 35(1)(c) of the *Real Estate Services Act* in that he: (i) in a number of trades occurring before January 1, 2006, failed to promptly provide to his managing broker, after acceptance, copies of the trading records referred to under section 8-5(1) of the Council Rules, in accordance with section 3-2(a) of the Council Rules and failed to keep his managing broker informed of real estate services being provided by him on behalf of the brokerage, in accordance with section 3-2(b) of the Council Rules; (ii) in a number of trades occurring on or

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## Disciplinary Decisions, *cont'd*

after January 1, 2006, failed to promptly provide to his managing broker, after acceptance, copies of the trading records referred to under section 8-5(1) and 8-5(2) of the Council Rules, in accordance with section 3-2(1)(b) of the Council Rules, and failed to keep his managing broker informed of real estate services being provided by him on behalf of the brokerage, in accordance with section 3-2(2)(a) of the Council Rules; (iii) in a number of trades occurring before January 1, 2006, failed to promptly disclose to buyers and to the brokerage remuneration as a result of providing real estate services, in accordance with section 5-11 of the Council Rules; (iv) in a number of trades occurring on or after January 1, 2006, failed to promptly disclose to buyers in writing remuneration as a result of providing real estate services, in accordance with section 5-11 of the Council Rules; (v) failed to promptly pay or deliver to his brokerage all money held or received from, for or on behalf of principals in relation to trades, in accordance with section 27(1) of the *Real Estate Services Act*; (vi) in a number of trades, failed to avoid a conflict of interest and offered agency representation to the buyer when it was inappropriate to do so as he was, variously, the seller and a principal in his own right; holding the sellers' second mortgage; and, acting as the buyer's second mortgagee; (vii) in a number of trades occurring on or after January 1, 2006, in which Mr. Sharif acted as seller and purported to act as the buyers' representative, failed to promptly disclose to the buyers in writing his interest in trade as seller, in accordance with section 5-9 of the Council Rules, and failed to promptly provide the original or a copy of this disclosure to his managing broker, in accordance with section 3-2(1) (a) of the Council Rules; and (viii) failed to ensure a seller, AG, a licensee under the *Real Estate Services Act*, promptly disclosed to the buyer in writing her interest in trade as a seller of property on East 41st Avenue, Vancouver (06-07-96), in accordance with section 5-9 of the Council Rules;

**RESULT:** Omar Mohammad Sharif was suspended for three (3) years from July 3, 2008 to July 2, 2011 (inclusive) after which he will be eligible to be licensed as a representative provided that he has satisfied the terms set out below. As conditions of licensing or continued licens-

ing, as the case may be, Mr. Sharif must: (a) complete Unit 1, "Agency Disclosure, Privacy and The Realtor Code" and Unit 10, "Legal and Ethical Issues" of the BCREA Residential Trading Services Applied Practice Course; (b) pay a disciplinary penalty to the Council in the sum of \$5,000.00; (c) pay the enforcement expenses of the Council in the sum of \$4,500.00; (d) satisfy the Council that he has rehabilitated himself, in that he is of good reputation, suitable to be licensed at the category for which he is applying, and fit to practice, as set out in section 10 of the *Real Estate Services Act*; (e) agree he will not employ, contract with, pay referral fees or other remuneration to, or otherwise engage unlicensed assistants, other than persons whose activities are solely of an administrative nature at the brokerage and whose entire remuneration is based on an hourly rate, which will be fully disclosed to his managing broker; (f) agree that he will not directly or indirectly finance any trades in real estate other than trades in real estate in which he is the principal, in which case he will not provide services to any party; and, (g) provide his proposed managing broker(s) with a copy of this decision. As conditions of Mr. Sharif's licensing, Mr. Sharif's proposed managing broker(s) must agree as a condition of Mr. Sharif's licensing or continued licensing, as the case may be: (a) to acknowledge having read this Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver and related Consent Order; (b) for a two year period following Mr. Sharif's licensing, to provide quarter-annual written reports to the Real Estate Council commencing on the first day of the quarter following the first three full months after Mr. Sharif becomes licensed, and on the first day of each and every quarter thereafter, indicating that the managing broker(s) has reviewed Mr. Sharif's contracts and other work in general; and (c) to promptly report to the Council anything of an adverse nature with respect to Mr. Sharif's activities during that two year period.

### Kevin William Wensley

**ISSUE:** Kevin William Wensley, representative, Cornerstone Properties Ltd. (Vic), Victoria, entered into a Consent Order

with the Council in which he consented to an Order that while licensed as a representative with D.F.H. Real Estate Ltd. he committed professional misconduct within the meaning of section 35(1) of the *Real Estate Services Act* in that he: (a) within the meaning of section 35(1)(c) of the Act, engaged in deceptive dealing by concealing from the seller his participation in the purchase of the properties from the seller, in that he provided the buyer with fifty percent of the deposit and fifty percent of the funds necessary to purchase the properties, and he shared in the buyer's profit on the buyer's subsequent resale of the properties; (b) contrary to section 3-3(1)(f) of the Council Rules, failed to disclose to the seller the material information that he was asked by the buyer to contribute funds towards the purchase of and to acquire an interest in the properties; (c) contrary to section 3-3(1)(i) of the Council Rules, failed to take reasonable steps to avoid a conflict of interest by providing funds to the buyer as a contribution towards the purchase of the properties; (d) contrary to section 3-3(1)(j) of the Council Rules, failed to promptly and fully disclose to the seller his conflict of interest, being that he provided the buyer with fifty percent of the deposit and fifty percent of the funds necessary to purchase the properties; (e) contrary to section 5-8(2) of the Council Rules, failed to disclose to the seller a substantive change of information, in that after the contract was entered into between the seller and the buyer, he decided to acquire an interest in the properties; (f) contrary to sections 5-9(1) and 5-9(6) of the Council Rules, failed to disclose an interest in trade to the seller, in that he was acquiring an interest in the properties in a partnership (as defined by section 5-7(iii) of the Council Rules) with the buyer; and (g) contrary to section 5-10(b)(iii) of the Council Rules, failed to fully and properly disclose his business relationship with the buyer.

**RESULT:** Kevin William Wensley was suspended for sixty (60) days from September 2, 2009 to October 31, 2009 (inclusive) and was ordered to enrol in and attend the first available CPE courses "Real Estate E&O Insurance Legal Update 2009" and "What Brokerages and REALTORS Need to Know About Agency", and pay enforcement expenses to the Council in the amount of \$1,000.00.

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## Disciplinary Decisions, *cont'd*

### **Randy Clayton Dyck and Andrew Bracewell**

**ISSUE:** Randy Clayton Dyck, representative, 551123 B.C. Ltd. dba Re/Max Randy Dyck, Abbotsford, entered into a Consent Order with the Council in which he consented to an Order that he committed professional misconduct within the meaning of section 35(1)(a) and (d) of the *Real Estate Services Act* in that he failed, contrary to section 3-4 of the Council Rules, to act honestly in that he forged the Complainants' signatures on the Limited Dual Agency Agreement.

**ISSUE:** Andrew Bracewell, representative, 551123 B.C. Ltd. dba Re/Max Randy Dyck, Abbotsford, entered into a Consent Order with the Council in which he consented to an Order that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he failed, contrary to section 3-4 of the Council Rules, to act with reasonable care and skill in that he purported to witness the signatures of the Complainants on the Limited Dual Agency Agreement when they had not, in fact, signed the Limited Dual Agency Agreement.

**RESULT:** Randy Clayton Dyck was suspended for four (4) months from October 21, 2009 to February 21, 2010 (inclusive) and was ordered to successfully complete the disciplinary education assignments applicable to Chapter 9 (Professional Ethics) and Chapter 12 (Law of Agency) of the Real Estate Trading Services Licensing Course.

**RESULT:** Andrew Bracewell was suspended for twenty-one (21) days from September 23, 2009 to October 13, 2009 (inclusive) and was ordered to successfully complete the disciplinary education assignments applicable to Chapter 9 (Professional Ethics) and Chapter 12 (Law of Agency) of the Real Estate Trading Services Licensing Course.

**RESULT:** Randy Clayton Dyck and Andrew Bracewell were ordered to be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,000.00.

### **Ivan Luke Kehler, Jodi Lynn Kehler, Gary Wayne Matthews, David Keith Charles Boughton and Keller Williams Valley Realty**

**ISSUE:** Jodi Lynn Kehler, representative, Landmark Realty Corp., Abbotsford, entered into a Consent Order with the Council in which she consented to an Order that, while licensed with Valley Realty Ltd. dba Keller Williams Valley Realty, Abbotsford, she committed professional misconduct within the meaning of section 35(1) of the *Real Estate Services Act* in that she: (a) contrary to one or more than one of section 35(1)(d) of the Act and section 3-3(1)(i) of the Council Rules, failed to take reasonable steps to avoid conflicts of interest in the sale of the Kehler property to the buyers and the provision of agency services by the Kehler to the buyers in that sale; (b) contrary to one or more than one of section 35(1)(d) of the Act and section 3-3(1)(i) of the Council Rules, failed to take reasonable steps to avoid conflicts of interest in the sale of the Kehler property to the buyers and the provision of agency services by the Kehler to the buyers in that sale and, at the same time, in the provision of agency services by the Kehler to the buyers in the sale of the buyers' property; (c) contrary to section 3-3(1)(j) of the Council Rules, failed to promptly and fully disclose to the buyers the conflicts of interest set out in paragraphs (a) and (b) above; and (d) contrary to sections 3-3(1)(a) and 3-4 of the Council Rules, failed to recommend to the buyers that they should obtain independent legal advice with respect to the Kehler property to the buyers and the Kehler providing agency services to the buyers in the sale of the Kehler property.

**ISSUE:** Ivan Luke Kehler, representative, Landmark Realty Corp., Abbotsford, entered into a Consent Order with the Council in which he consented to an Order that, while licensed with Valley Realty Ltd. dba Keller Williams Valley Realty, Abbotsford, he committed professional misconduct within the meaning of section 35(1) of the *Real Estate Services Act* in

that he: (a) contrary to one or more than one of section 35(1)(d) of the Act and section 3-3(1)(i) of the Council Rules, failed to take reasonable steps to avoid conflicts of interest in the sale of the Kehler property to the buyers and the provision of agency services by the Kehler to the buyers in that sale; (b) contrary to one or more than one of section 35(1)(d) of the Act and section 3-3(1)(i) of the Council Rules, failed to take reasonable steps to avoid conflicts of interest in the sale of the Kehler property to the buyers and the provision of agency services by the Kehler to the buyers in that sale and, at the same time, in the provision of agency services by the Kehler to the buyers in that sale of the buyers' property; (c) contrary to section 3-3(1)(j) of the Council Rules, failed to promptly and fully disclose to the buyers the conflicts of interest set out in paragraphs (a) and (b) above; and (d) contrary to sections 3-3(1)(a) and 3-4 of the Council Rules, failed to recommend to the buyers that they should obtain independent legal advice with respect to the Kehler property to the buyers and the Kehler providing agency services to the buyers in that sale.

**ISSUE:** David Keith Charles Boughton, managing broker, Valley Realty Ltd. dba Keller Williams Valley Realty, Abbotsford, entered into a Consent Order with the Council in which he consented to an Order that he committed professional misconduct within the meaning of section 35(1) of the *Real Estate Services Act* in that he, contrary to section 3-3(1)(i) of the Council Rules, failed to take reasonable steps to avoid conflicts of interest as set out with respect to Jodi Kehler and Ivan Kehler in each respective paragraph (a) above.

**ISSUE:** Gary Wayne Matthews, associate broker, Valley Realty Ltd. dba Keller Williams Valley Realty, Abbotsford, while licensed as managing broker of Keller Williams Valley Realty, entered into a Consent Order with the Council in which he consented to an Order that he committed professional misconduct within the meaning of section 35(1) of the *Real Estate Services Act* in that he, contrary to section 3-3(1)(i) of the Council Rules, failed

## Disciplinary Decisions, *cont'd*

to take reasonable steps to avoid conflicts of interest as set out with respect to Jodi Kehler and Ivan Kehler in each respective paragraph (a) above.

**ISSUE:** Valley Realty Ltd. dba Keller Williams Valley Realty, Abbotsford, entered into a Consent Order with the Council in which it consented to an Order that it committed professional misconduct within the meaning of section 35(1) of the *Real Estate Services Act* in that it, contrary to section 3-3(1)(i) of the Council Rules, failed to take reasonable steps to avoid conflicts of interest as set out with respect to Jodi Kehler and Ivan Kehler in each respective paragraph (a) above.

**RESULT:** Jodi Lynn Kehler was suspended for seven (7) days from September 2, 2009 to September 8, 2009 (inclusive) and was ordered to enrol in and attend the first available CPE course “What Brokerages and REALTORS Need to Know about Agency”.

**RESULT:** Ivan Luke Kehler was suspended for seven (7) days from September 2, 2009 to September 8, 2009 (inclusive) and was ordered to enrol in and attend the first available CPE course “What Brokerages and REALTORS Need to Know about Agency”.

**RESULT:** David Keith Charles Boughton was reprimanded and was ordered to enrol in and attend the first available CPE course “What Brokerages and REALTORS Need to Know about Agency”.

**RESULT:** Gary Wayne Matthews was reprimanded and was ordered to enrol in and attend the first available CPE course “What Brokerages and REALTORS Need to Know about Agency”.

**RESULT:** Jodi Lynn Kehler, Ivan Luke Kehler, David Keith Charles Boughton and Gary Wayne Matthews are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,500.00.

**RESULT:** Valley Realty Ltd. dba Keller Williams Valley Realty was reprimanded.

### **Richard William Dean and Lawrence Bruce McGillivray and Facilitech Property Management Ltd.**

**ISSUE:** Richard William Dean, representative, Wynford Realty Group Ltd. dba The Wynford Group, Vancouver, while licensed as a representative with Facilitech Property Management Ltd., Vancouver, entered into a Consent Order with the Council in which he consented to an Order that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening section 3(1) of the *Real Estate Services Act* and section 3-3(1)(c) of the Council Rules by failing to act within the scope of authority by ordering plumbing work without the prior authorization of the strata council.

**ISSUE:** Lawrence Bruce McGillivray, associate broker, Facilitech Property Management Ltd., Vancouver, while licensed as managing broker of Facilitech Property Management Ltd., entered into a Consent Order with the Council in which he consented to an Order that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he, as managing broker for the brokerage and in contravention of section 6(2) of the *Real Estate Services Act*: (a) failed to ensure that the brokerage provided the records as required under section 8-7.1(3)(a) of the Council Rules when they were requested by a brokerage providing strata management services to a former client: bank statements, bank reconciliations and a record showing amounts received and disbursed, the reason for the receipt or disbursement and any unexpended balance for the months of January 2006 through March 2007; and invoices paid on behalf of the former client for the months of January, February and March 2006; (b) contravened section 3-1 of the Council Rules in that he, as managing broker of Facilitech Property Management Ltd, when he: (i) was not actively engaged in the management of the said brokerage; (ii) failed to ensure that the said business of the brokerage was carried out competently and in accordance with the Act, Regulations, Rules and/or Bylaws; and (iii) failed to ensure that there was an adequate level of supervision for related associate brokers and representatives who perform duties on behalf of the

brokerage when a licensee, Richard William Dean, contravened section 3-3(1)(c) of the Council Rules by failing to act only within the scope of the authority in ordering plumbing work without the prior authorization of the strata council.

**ISSUE:** Facilitech Property Management Ltd., Vancouver, entered into a Consent Order with the Council in which it consented to an Order that it committed professional misconduct within the meaning of section 35(1) of the *Real Estate Services Act* by contravening section 25 of the *Real Estate Services Act* in that it: (a) failed to keep proper books, accounts and other records in accordance with the rules, pursuant to section 25 of the *Real Estate Services Act*; and (b) did not provide the following records as required under the Act when requested by a brokerage providing strata management services to a former client: bank statements, bank reconciliations, and a record showing amounts received and disbursed, the reason for the receipt or disbursement, and any unexpended balance for the months of January 2006 through March 2007; and invoices paid on behalf of the former client for the months of January, February and March of 2006.

**RESULT:** Richard William Dean was suspended for seven (7) days from August 12, 2009 to August 18, 2009 (inclusive) and was ordered to successfully complete the disciplinary education assignment applicable to Chapter 12 (Law of Agency) of the Strata Management Licensing Course.

**RESULT:** Lawrence Bruce McGillivray was reprimanded, ordered to pay a discipline penalty to the Council in the amount of \$2,000.00, and to successfully complete the disciplinary education assignment applicable to Chapter 2 (Mandatory Requirements Under The *Real Estate Services Act*) of the Broker's Licensing Course.

**RESULT:** Facilitech Property Management Ltd. was reprimanded and ordered to pay a discipline penalty to the Council in the amount of \$2,000.00.

**RESULT:** Further, Facilitech Property Management Ltd., Richard William Dean and Lawrence Bruce McGillivray are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00.

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## Disciplinary Decisions, *cont'd*

### Harold John Kullman

**ISSUE:** Harold John Kullman, representative, Horizon Realty Ltd. (Wstbnk) dba Coldwell Banker – Horizon Realty (Wstbnk), Westbank, entered into a Consent Order with the Council in which he consented to an Order that, while he was licensed as a representative with Horizon Realty Ltd. dba Coldwell Banker – Horizon Realty, Kelowna, he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he, in the marketing and sale of property at Chute Lake Road: (a) signed the Contract of Purchase, on behalf of the seller, without having written authority, contrary to section 5-3 of the Council Rules; (b) failed to deliver or provide a copy of the ratified Contract to the seller, contrary to section 5-4(a) of the Council Rules; (c) failed to deliver to his brokerage a copy of the ratified Contract, contrary to sections 3-2(1)(b) and 5-4(b) of the Council Rules; (d) failed to act in the best interest of his client and apply reasonable care and skill when he did not advise the sellers to clarify in writing the ambiguous clause “...The Buyer agrees to keep their new dwelling at a reasonable height...”, contrary to sections 3-3(1)(a) and 3-4 of the Council Rules; and (e) failed to apply reasonable care and skill in that he failed to execute an addendum for the signature of the buyer and the seller, removing the subject to the seller ratifying the Contract by May 16, 2006, contrary to section 3-4 of the Council Rules.

**RESULT:** Harold John Kullman was suspended for seven (7) days from October 14, 2009 to October 20, 2009 (inclusive) and was ordered 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 enrol in and attend the first available “Real Estate E&O Insurance Legal Update 2009” course, and pay enforcement expenses to the Council in the amount of \$750.00.

### John Joseph Berry

**ISSUE:** John Joseph Berry, representative, Ocean Pacific Realty Inc. dba Re/

Max Ocean Pacific Realty, Comox, entered into a Consent Order with the Council in which he consented to an Order that he committed professional misconduct within the meaning of section 35 of the *Real Estate Services Act* by: (a) failing to use reasonable efforts to discover whether the zoning class stated for the property in the listing provided by Mr. Berry to the buyer was correct when Mr. Berry knew or ought to have known that the zoning for the property was a relevant consideration for the buyer; and (b) failing to act with reasonable care and skill by not including in the buyer’s offer for the property a clause providing that the buyer’s offer was subject to the buyer’s confirmation that the zoning class stated for the property in the listing was correct when Mr. Berry knew or ought to have known that the zoning for the property was a relevant consideration for the buyer.

**RESULT:** John Joseph Berry was suspended for seven (7) days from September 2, 2009 to September 8, 2009 (inclusive) and was ordered to successfully complete the disciplinary education assignments applicable to Chapter 11 (Contracts for Real Estate Transactions) and Chapter 18 (Local Government Law) of the Real Estate Trading Services Licensing Course, and pay enforcement expenses to the Council in the amount of \$750.00.

### Peter Ronald Gibson and R.P.G. Realty Advisors Inc.

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

**ISSUE:** Peter Ronald Gibson, managing broker, R.P.G. Realty Advisors Inc., Vancouver, entered into a Consent Order with the Council in which he consented to an Order that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services*

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

**RESULT:** R.P.G. Realty Advisors Inc. was reprimanded.

**RESULT:** Peter Ronald Gibson was reprimanded.

**RESULT:** R.P.G. Realty Advisors Inc. and Peter Ronald Gibson were jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,000.00.

### Kwok Ping Joseph Tam and Pacific Place – ARC Realty Ltd.

**ISSUE:** Kwok Ping Joseph Tam, managing broker, Pacific Place – Arc Realty Ltd., Vancouver, and Pacific Place – Arc Realty Ltd., Vancouver, entered into a Consent Order with the Council in which they consented to an Order that they committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that Mr. Tam, as managing broker for the brokerage, for which the brokerage is also responsible, failed to ensure that the said business of the brokerage was carried out competently and in accordance with section 6(2) of the *Real Estate Services Act* and section 3-1 of the Council Rules in that he: (a) failed to properly supervise the activities of a licensee and failed to identify deficiencies and areas of non-compliance in the related contracts of purchase and sale and disclosure obligations; (b) failed to ensure disclosures were provided to buyers and sellers as and when required by section 27(4) of the *Real Estate Services Act* and Part 5, Division 2 of the Council Rules; (c) failed to ensure a licensee promptly provided the disclosures as well as any significant correspondence to the managing broker and that the brokerage kept all written disclosures as well as any significant correspondence, as required by

## Disciplinary Decisions, *cont'd*

section 8-4 of the Council Rules; and (d) failed to ensure a licensee promptly provided all trading records, including contracts and addenda to the managing broker and that the brokerage kept all trading records, including contracts and addenda, as required by section 8-5(1) of the Council Rules.

**RESULT:** Kwok Ping Joseph Tam was reprimanded and was ordered to successfully complete the disciplinary education assignments applicable to Chapter 2 (Mandatory Requirements Under The *Real Estate Services Act*) of the Real Estate Trading Services Licensing Course.

**RESULT:** Pacific Place – Arc Realty Ltd. was reprimanded and ordered to pay enforcement expenses to the Council in the amount of \$750.00.

### Stephen Thomas Johnson

**ISSUE:** Stephen Thomas Johnson, representative, Century 21 Bob Sutton Realty (P.G.) Ltd., Prince George, entered into a Consent Order in which he consented to an Order with the Council that, while licensed with Langer Bros. Holdings Ltd. dba Coldwell Banker Boardwalk Properties (2000), Prince George, he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he, as the limited dual agent in the listing and sale of property by way of a Contract of Purchase and Sale, failed to exercise reasonable care and skill in the drafting of the contract in that he did not include the

tenancy details, setting out the names of the tenants, the type of tenancies, the monthly rents, what rents included, the amount of security deposits, when the security deposits were taken, and the date of the last rental increase, in contravention of section 3-3(1)(a), (f), and (h) and section 3-4 of the Council Rules.

**RESULT:** Stephen Thomas Johnson was reprimanded and was ordered to enrol in and attend the first available “Real Estate E&O Insurance Legal Update 2009” course, and pay enforcement expenses to the Council in the amount of \$1,000.00.

### Katherine Ann Campbell

**ISSUE:** Katherine Ann Campbell, managing broker, Integrity Realty Ltd. dba Re/Max Integrity Realty, Barriere, entered into a Consent Order with the Council in which she consented to an Order that she committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* as a limited dual agent in the purported sale of property by an April 8, 2008 Contract of Purchase and Sale in that she failed to immediately notify the sellers in writing that the deposit that was contemplated in the contract, as amended by the April 21, 2008 addendum, had not been received on or before May 2, 2008, in accordance with her duties under section 3-1(4)(a) and 3-1(5) of the Council Rules.

**RESULT:** Katherine Ann Campbell was reprimanded and was ordered to enrol

in and attend the first available “Real Estate E&O Insurance Legal Update 2009” course, and pay enforcement expenses to the Council in the amount of \$1,000.00.

### Frederick Ka Ming Moy

**ISSUE:** Frederick Ka Ming Moy, representative, Sutton Centre Realty Ltd. dba Sutton Centre Realty, Burnaby, entered into a Consent Order with the Council in which he consented to an Order that, while licensed as a representative with Sutton Centre Realty Ltd. (Van) dba Sutton Centre Realty (Van), Vancouver, he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he: (a) failed to ensure he had the written authorization from the sellers to sign an amended listing contract on their behalves, in accordance with section 5-1(6) and 5-3 of the Council Rules and failed to ensure he delivered the amended listing contract to the sellers upon its amendment, in accordance with section 5-2 of the Council Rules, and (b) failed to clarify on the listing agreement that he had only witnessed one of the sellers’ signatures.

**RESULT:** Frederick Ka Ming Moy was reprimanded and ordered to enrol in and attend the first available CPE course “Contracts Keep on Top of Changes”, and pay enforcement expenses to the Council in the amount of \$750.00. ■

## Feedback?

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

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

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PM# 40016497