

Report from Council

'Mere Postings' and the *Real Estate Services Act*

The February 2011 *Report from Council* contained an article (www.recbc.ca/pdf/rfc/2011february.pdf) which addressed the Consent Agreement between the Competition Bureau and the Canadian Real Estate Association (CREA), including how the Council Rules relate to that agreement. The 2011 article focused on the requirements of the Council Rules for BC licensees who are providing 'mere posting' services. Highlighted was the importance of licensees ensuring that consumers understand

- the nature of the representation, if any, that the licensee is providing,
- the scope of services that will be provided, and
- any other relevant terms or conditions related to the service.

The article also advised that the Office of the Superintendent of Real Estate (the 'Superintendent'), which has jurisdiction over questions related to unlicensed activity, was reviewing the issue of people who are not licensed in British Columbia, but who are licensed in another jurisdiction, providing 'mere posting' services related to real estate located in British Columbia.

For certainty, the Competition Bureau/CREA Consent Agreement defines a

'mere posting' as "a listing on a Member board's MLS® System in respect of which the Member has chosen or agreed not to provide services to the Seller other than submitting the listing for posting on a Member Board's MLS® System."

There is an exemption in section 2.10 of the Regulations under RESA for "A person who is providing trading services only by providing information (including)...the publication of information contained in an advertisement of specific real estate".

The Superintendent has advised that in order to determine whether this exemption applies, or whether licensing in BC is required, it is important that it is clear whether a listing is a 'mere posting' or whether other real estate services are being offered or provided. This is important because the provision of other real estate services in addition to a 'mere posting' service would require licensing in BC. This determination would need to be made on a case by case basis; typically this would include a review of the service agreement as well as any evi-

dence of actual services being provided.

Questions regarding unlicensed activity should be directed to the Office of the Superintendent at 604-660-3450. Licensees with questions regarding the Competition Bureau/CREA Consent Agreement should direct those questions to their local real estate board. Questions regarding the Council Rules should be directed to the Council office at 604-683-9664, toll-free 1-877-683-9664, or email info@recbc.ca. ■



The provision of other real estate services in addition to a 'mere posting' service would require licensing in BC.

A Note from the Chair



Michael Ziegler,
Chair

Last month, licensees received an email from the Council highlighting the Council's 2011/12 Annual Report. The Annual Report contains information about the role and operations of the Council, as well as statistical information about complaints and discipline taken by the Council over the past year. If you haven't done so already, I encourage you to visit the Council's website at www.recbc.ca/about/ar.html and take a look at the latest Annual Report.

Over the past several months, the Council has noticed an increase in the number of complaints from managing brokers relating to licensees not providing copies of transaction records to the brokerage in a timely manner. I remind licensees that the obligation to provide these records to a brokerage 'promptly' means they must be provided without delay. Managing brokers play an important role in maintaining active charge of a real estate office and, in order to effectively accomplish this, licensees must provide managing brokers with copies of all transaction records.

For those licensees involved in providing strata management services, the article on page five provides a reminder of the requirement to disclose remuneration

and benefits received in relation to strata management services. The Council has developed disclosure forms for strata management services that are available on the Council's website at www.recbc.ca. Licensees may use these forms, or any form of the licensees choosing so long as it satisfies the disclosure requirements set out in section 5-11 and 5-12 of the Council Rules.

Finally, the Council continues to see significant numbers of consumer complaints made against real estate licensees. The discipline section of this newsletter contains the resulting sanctions, including in one case a \$5000 disciplinary penalty, made against licensees for failure to exercise due care and skill in the performance of duties. I urge all licensees to ensure that they are competent to render services to the public prior to doing so. If you do not possess the knowledge in a particular practice area (ie. commercial, farm, rural, sale of stratas, etc.), you should refer the business to another licensee with expertise in that area. Consumer interest must always come first when providing real estate services.

On behalf of Council members and staff, I wish you a busy, productive and enjoyable fall.

Michael Ziegler
Chair

Receive the Council Newsletter by Email

In the past eight months, over 6,400 licensees have opted to receive the *Report from Council* newsletter by email. Licensees wishing to receive the *Report from Council* newsletter by email instead of hard copy can email the Council office at info@recbc.ca. Please include your full legal name in your email, as well as the preferred email address that you would like the Council to use.

Email Address changed? Licensees are required to update the Council if their email address changes. Email address changes can be sent to info@recbc.ca.

Office Closures

The Council office will be closed on **Monday, November 12, 2012** for Remembrance Day.

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David Rishel
Bruce Turner

STATISTICS October 2012

Representatives: 17,908
Associate Brokers: 1,679
Managing Brokers: 1,323
Total Licensees: 20,910
Brokerages (including branch offices
and sole proprietors): 1,455

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.

Canada Post

Return undeliverable addresses to:
Real Estate Council of BC
900-750 West Pender Street
Vancouver, BC, Canada V6C 2T8

PM# 40016497

Printed on 100% post-consumer
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Council Rule and Bylaw Amendments

The Council, at its September 2012 meeting, approved changes to its Rules and Bylaws as shown below. The changes to the Council Rules relate to time frames allowed in relation to the writing of

licensing examinations. These changes are intended to increase examination security. The change to the Bylaws relates to the annual financial reporting procedures required of brokerages.

The Rule and Bylaw changes come into effect January 1, 2013. Licensees with questions can contact the Council at 604-683-9664, toll-free 1-877-683-9664 or email info@recbc.ca. ■

Rule Changes	Description
Educational requirements 2-7 (1) <i>Courses</i> —The courses referred to in this Division are the courses established by or on behalf of the council for the purposes of licensee qualification. (2) <i>Failed examinations</i> —An applicant (a) <u>who fails an examination required under these rules must wait a minimum of 90 days before again attempting the examination; and must not have failed an examination required under these rules within the last 90 days before again attempting the examination;</u> (b) <u>who fails an examination required under these rules two times in succession must retake and successfully complete the applicable licensing course before again attempting the examination.</u> (3) <i>Waiver</i> —The council may waive, on the basis of an applicant's previous knowledge or training, some or all of the requirements of this Division in relation to (a) a course, (b) a corresponding examination, or (c) a course and its corresponding examination.	This change requires an individual who fails a licensing examination more than once to retake and successfully complete the applicable licensing course before being eligible to again write the examination. The purpose is twofold: firstly, to ensure applicants are sufficiently familiar with the course materials, and secondly, to increase exam security by lowering the risk of individuals re-writing the exam on several occasions over a short period of time in order to memorize exam questions.
Educational requirements for new licensees 2-8 (1) Licensing courses—In order to be issued a licence, an applicant for a new licence who is an individual must <u>have</u> (a) <u>(a) have taken the applicable licensing courses respecting the real estate services in relation to which the application is made,</u> (b) <u>successfully completed any assignments corresponding to those courses, no longer than 2 years before the date of writing any corresponding examinations,</u> and (b) <u>have passed the examinations corresponding to those courses, no longer than 1 year before the date of the application.</u>	This change limits the amount of time an individual may have to write the licensing examination to a maximum of 2 years from the completion of all course assignments. The purpose of this is again to increase candidate knowledge of course material and to increase exam security.
4-9 Annual accountant's report ... (7) The certification under subsection (6) must be that, subject to any noted exceptions, (a) all books, records, accounts and subordination agreements of the brokerage, <u>plus any correspondence between this brokerage and the council related to the fiscal year with regard to these books, records, accounts and subordination agreements,</u> have been disclosed to the accountant, (b) there have been no changes in capital structure, directors, officers, shareholders, partners or accountants of the brokerage since the date of the previous accountant's report filed, <u>and</u> (c) to the knowledge of the individual making the certification, the report is true and complete.	The annual accountant's report required to be submitted to the Council by each brokerage includes a certification which must be completed by a managing broker and a director, officer, partner, or sole proprietor of the brokerage. Subsection 4-9(7) details matters which must be certified. The additions include verification that pertinent correspondence between the brokerage and the council has been provided to the reporting accountant.

Disclosure of Remuneration & Benefits

Strata management licensees must disclose remuneration and benefits received in relation to their services.

Disclosure of Remuneration

Section 5-11 of the Council Rules requires that a licensee disclose all remuneration received or anticipated to be received from anyone other than the licensee's client, which is paid as a result of providing the real estate services to or on behalf of a client. Such disclosure must be in writing and be separate from a service agreement or any other agreement under which real estate services are provided.

Licensees engaged in strata management are required to disclose to the strata corporation any remuneration that the licensee receives or anticipates receiving, which is paid by someone other than the strata corporation and which is paid as a result of providing strata management services to or on behalf of that strata corporation. Section 5-11 of the Council Rules provides that if a licensee receives or anticipates receiving, directly or indirectly, remuneration as a result of recommending persons to the strata corporation who provide real estate-related products or services or recommending the strata corporation to such persons, the licensee must make written disclosure of the remuneration to the strata corporation.

Remuneration is defined in the *Real Estate Services Act* to be any form of remuneration, including any commission, fee, gain, or reward, whether the remuneration is received or is to be received directly or indirectly.

Licensees who recommend particular suppliers, and service and trades people to a strata corporation, and who receive any form of benefit, must disclose the benefit to the strata corporation. The benefit may take the form of a referral fee, or it may be loyalty points, air miles, or it may even be a discount on work done for the licensee personally. In each case, the licensee must promptly disclose

in writing to the strata corporation and the licensee's related brokerage the source of the remuneration, the amount of the remuneration or, if the amount is unknown, the likely amount of the remuneration or the method of calculation of the remuneration, and all other relevant facts relating to the remuneration. All such remuneration must flow through the brokerage.

The brokerage is also a licensee; therefore, where the brokerage is receiving the remuneration and not an individual within the brokerage, the managing broker must ensure that the brokerage has provided sufficient disclosure to its clients to meet the requirements of sections 5-11 and/or 5-12 of the Council Rules.

The Council has developed disclosure forms for strata management services that are available on the Council's website at www.recbc.ca. Licensees may use these disclosure forms or any form of the licensees choosing so long as it satisfies the disclosure requirements outlined above.

Benefits in Relation to Strata Management Services

Section 5-12 of the Council Rules requires that, if a licensee, who provides strata management services, receives or anticipates receiving a benefit as a result of expenditures made by or on behalf of the strata corporation to whom the services are provided, the nature and extent of the benefit must be disclosed in writing to both the strata corporation and the licensee's brokerage before the benefit is accepted. A brokerage is a licensee and is subject to the same disclosure require-



ments as individual licensees. Disclosure is also required if an associate of the licensee is to receive the benefit.

A licensee may obtain a benefit by retaining companies in which the licensee or an associate of the licensee has an interest to provide services to or carry out work for the strata corporation. If, for example, the licensee retained a company owned by their spouse to provide landscaping services, section 5-12 of the Council Rules would apply and require that the benefit be disclosed to the strata corporation. In such circumstances, an associate of the licensee is obtaining a benefit as a result of an expenditure made on behalf of the strata corporation.

Section 5-7 of the Council Rules defines the meaning of "associate" for both individual licensees and brokerages. Strata managers should pay particular attention to the definition in order to ensure that the required disclosures are made.

Licensees must also ensure that, if they intend to direct business to any service provider on the understanding that the licensee will receive a benefit for doing so, this is first disclosed to and agreed to by the strata corporation on whose behalf the services will be provided. ■

Disciplinary Decisions

Since the August 2012 *Report from Council* newsletter, the following actions have been taken as a result of disciplinary hearings and Consent Orders conducted by the Council.

Trading Services

Nirlaip (Paul) Singh Bal

ISSUE: Nirlaip (Paul) Singh Bal, representative, Westmar Realty Ltd. dba Macdonald Realty Westmar, Richmond, entered into a Consent Order with the Council that, while licensed with 621104 B.C. Ltd. dba Homelife Benchmark Titus Realty, Surrey, he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he:

(a) contravened section 35(1)(a) of the *Real Estate Services Act* in that he did not advise his managing broker that he acted as a limited dual agent in an assignment of the Contract of Purchase and Sale dated January 18, 2009;

(b) contravened section 3-4 of the Council Rules in that he failed to apply reasonable care and skill when he acted on behalf of the assignor of the contract and the assignee, by not providing written notice to the owner of the property that the contract had been assigned; and

(c) contravened section 3-4 of the Council Rules in that he failed to act honestly when he attended a meeting on March 16, 2009 between the seller and the assignor and did not reveal that he was a licensee and that he was acting as a limited dual agent in the assignment.

RESULT: Nirlaip (Paul) Singh Bal was suspended for twenty-one (21) days from October 17, 2012 to November 6, 2012 (inclusive), was ordered to successfully complete the Real Estate Trading Services Remedial Education Course and pay enforcement expenses to the Council in the amount of \$1,000.00.

Roslyn Anita Millard

ISSUE: Roslyn Anita Millard, representative, Roslyn & Associates Realty Ltd., Surrey, entered into a Consent Order with the Council that she committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that she:

(a) contravened section 3-4 of the Council Rules in that she failed to act with reasonable care and skill when she drafted a clause in the Contract of Purchase and Sale which set out that the deposit was to be paid directly to the seller, but incorporated a term that 25% of each deposit was to be paid to the brokerage as commission without clarifying where the commission was to be held;

(b) contravened section 27(4)(a) of the *Real Estate Services Act* in that she failed to obtain a written agreement separate from the Contract of Purchase and Sale when the deposit would not be held by the brokerage; and

(c) contravened section 35(1)(d) of the *Real Estate Services Act* and section 3-4 of the Council Rules in that, if the intention of the parties was that the deposit installments paid by the buyer, a portion of each were forwarded directly to the sellers, were to be non-refundable, she failed to ensure that intention was included as a term of the Contract of Purchase and Sale.

RESULT: Roslyn Anita Millard was suspended for twenty-one (21) days from October 17, 2012 to November 6, 2012 (inclusive), and was ordered to successfully complete the Real Estate Trading Services Remedial Education Course and pay enforcement expenses to the Council in the amount of \$1,000.00.

Behzad (Burt) Behzadi

ISSUE: Behzad (Burt) Behzadi, currently unlicensed, entered into a Consent Order with the Council that, while licensed as a representative with Vernon Realty Inc. dba Re/Max-Vernon, Vernon, he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he:

(a) contrary to section 3-3(1)(h) of the Council Rules, failed to use reasonable efforts to discover relevant facts, in that he did not determine on behalf of the buyer whether the manufactured home, at the time of the buyer's purchase, had affixed to it a Safety Label; and

(b) contrary to section 3-4 of the Council Rules, failed to act with reasonable care and skill, in that he offered for sale the manufactured home without a Safety Label.

RESULT: Behzad (Burt) Behzadi was suspended for seven (7) days upon relicensing and was ordered to pay enforcement expenses to the Council in the amount of \$1,250.00.

Ahmet (Matt) Murat Kadioglu

ISSUE: Ahmet (Matt) Murat Kadioglu, representative, Fraseridge Realty Ltd. dba Amex-Fraseridge Realty, Vancouver, entered into a Consent Order with the Council that, while licensed with West Coast Realty Ltd. (Van49) dba Sutton Group-West Coast Realty (Van49), Vancouver, he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he:

(a) contravened section 3-2(2)(b) of the Council Rules by failing to immediately notify his managing broker that the deposit set out in clause 2 of the contract was not received until approximately four days after it was required by the contract;

(b) contravened section 27(1)(a) of the *Real Estate Services Act* by failing to promptly deliver the deposit received from his buyer client to the brokerage; and

(c) failed to use reasonable care and skill when he provided the brokerage with a Property Disclosure Statement dated September 17, 2009 and Late Deposit Cheque Form dated September 9, 2009, which had not been signed by both the buyer and the seller, contrary to section 3-4 of the Council Rules.

RESULT: Ahmet (Matt) Murat Kadioglu was suspended for seven (7) days from September 5, 2012 to September 11, 2012 (inclusive), and was ordered to successfully complete the Real Estate Trading Services Remedial Education Course and pay enforcement expenses to the Council in the amount of \$1,000.00.

Allan (Al) Wayne Miller

ISSUE: Allan (Al) Wayne Miller, representative, Centre City Real Estate Inc. dba Re/Max Centre City Realty, Prince George, entered into a Consent Order with the Council that he committed professional misconduct within the meaning of section 35(1) of the *Real Estate Services Act* in that he, contrary to section 3-4 of the Council Rules, know-

Disciplinary Decisions, *cont'd*

ing that there were electrical issues concerning the property, failed to advise the buyers before the buyers entered into the contract to either make further inquiries as to the extent of these issues and what was required, if anything, to rectify these issues or to make the contract subject to the buyers being satisfied about the nature and extent of the electrical issues.

RESULT: Allan (Al) Wayne Miller was suspended for (7) seven days from September 26, 2012 to October 2, 2012 (inclusive), and was ordered to successfully complete the Real Estate Trading Services Remedial Education Course and pay enforcement expenses to the Council in the amount of \$1,000.00.

Brendan Tait Whitney

ISSUE: Brendan Tait Whitney, representative, Nyda Realty Inc. dba Re/Max Nyda Realty, Chilliwack, entered into a Consent Order with the Council that, while licensed with Sutton Group–Showplace Realty Ltd, Chilliwack, he committed professional misconduct within the meaning of section 35(1) (a) of the *Real Estate Services Act* in that he: (a) contrary to sections 3-3(1)(h) and 3-4 of the Council Rules, failed to act in the best interests of the client, failed to use reasonable efforts to discover relevant facts and failed to act with reasonable care and skill, in that he failed to make inquiries as to whether the seller had obtained the necessary permit to construct the wall and had complied with the bylaw; and (b) contrary to sections 3-3(1)(a), 3-3(1)(h) and 3-4 of the Council Rules, failed to act in the best interests of the client, failed to use reasonable efforts to discover relevant facts and failed to act with reasonable care and skill, in that he failed to make inquiries as to whether the wall had been constructed inside the setback.

RESULT: Brendan Tait Whitney was suspended for seven (7) days from September 26, 2012 to October 2, 2012 (inclusive), and was ordered to successfully complete the Real Estate Trading Services Remedial Education Course and pay enforcement expenses to the Council in the amount of \$1,250.00.

Marjorie Ann Ashdown

ISSUE: Marjorie Ann Ashdown, representative, Brent Roberts Realty Ltd. dba Royal LePage Brent Roberts Realty, Surrey, en-

tered into a Consent Order with the Council that she committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that she:

(a) contrary to sections 3-3(1)(h) and 3-4 of the Council Rules, failed to use reasonable efforts to discover relevant facts and failed to act with reasonable care and skill, in that she failed to make inquiries as to whether the seller had obtained the necessary permits to construct the wall and had constructed it in accordance with the bylaw; and

(b) contrary to sections 3-3(1)(h) and 3-4 of the Council Rules, failed to use reasonable efforts to discover relevant facts and failed to act with reasonable care and skill, in that she failed to make inquiries as to whether the wall had been constructed inside the setback.

RESULT: Marjorie Ann Ashdown was suspended for seven (7) days from September 26, 2012 to October 2, 2012 (inclusive), and was ordered to successfully complete the Real Estate Trading Services Remedial Education Course and pay enforcement expenses to the Council in the amount of \$1,250.00.

Koyne Dean Loiselle Vantage West Realty Inc.

ISSUE: Vantage West Realty Inc., Kelowna, entered into a Consent Order with the Council that it committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that, in regards to a \$20,000.00 deposit held as stakeholder pursuant to a Contract of Purchase and Sale for property located in Kelowna dated December 12, 2008, it contravened section 30(2) of the *Real Estate Services Act* in that it released to the seller the \$20,000.00 deposit from its trust account without the written agreement of the parties to the contract.

ISSUE: Koyne Dean Loiselle, managing broker, Vantage West Realty Inc., Kelowna, entered into a Consent Order with the Council that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that, while managing broker of the brokerage, in regards to a \$20,000.00 deposit held by the brokerage as stakeholder pursuant to the Contract of Purchase and Sale, he contravened section 3-1(1)(b) of

the Council Rules in that he permitted the brokerage to release the \$20,000.00 to the seller without the written agreement of the parties to the contract, contrary to section 30(2) of the *Real Estate Services Act*.

RESULT: Vantage West Realty Inc. was reprimanded.

RESULT: Koyne Dean Loiselle's managing broker's licence was suspended for seven (7) days from November 21, 2012 to November 27, 2012 (inclusive) but he was immediately eligible to be licensed as an associate broker or representative.

RESULT: Vantage West Realty Inc. and Koyne Dean Loiselle were ordered to be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,250.00.

Patrick Shiu-Ming Leung

ISSUE: Patrick Shiu-Ming Leung, managing broker, Planet Group Realty Inc., Surrey, entered into a Consent Order with the Council that, while licensed with Planet Group Realty Inc. and two other previous brokerages, he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that, in relation to rental property management services he provided to the owner of property, as requested by the owner of the property from approximately September 2006 until approximately December 2009, he:

(a) contravened section 7(3)(a) of the *Real Estate Services Act* in that he provided rental property management services to the owner of the property directly and not through or on behalf of the brokerage;

(b) contravened section 7(3)(b) of the *Real Estate Services Act* by receiving remuneration in respect of rental property management services he provided to the owner of the property directly, and apart from the brokerage; and

(c) contravened section 27(1) of the *Real Estate Services Act* by failing to promptly pay or deliver to the brokerage money he received from, for or on behalf of a principal in relation to rental property management services he provided to the owner of the property.

RESULT: Patrick Shiu-Ming Leung was reprimanded and was ordered to pay a discipline penalty to the Council in the amount

Disciplinary Decisions, *cont'd*

of \$2,500.00, successfully complete the Real Estate Trading Services Remedial Education Course, and pay enforcement expenses to the Council in the amount of \$1,000.00.

Brian Edward Rogers

ISSUE: Brian Edward Rogers, representative, and Brian Rogers Personal Real Estate Corporation, Value Plus 3% Real Estate Inc., Vernon, while licensed with Vernon Realty Inc. dba Re/Max Vernon, Vernon, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that they:

(a) contrary to section 3-3(1)(h) of the Council Rules, failed to use reasonable efforts to discover relevant facts, in that they did not determine on behalf of the buyer whether the manufactured home, at the time of the buyer's purchase, had affixed to it a Safety Label; and

(b) contrary to section 3-4 of the Council Rules, failed to act with reasonable care and skill, in that they offered for sale the manufactured home without a Safety Label.

RESULT: Brian Edward Rogers and Brian Rogers Personal Real Estate Corporation were reprimanded. Mr. Rogers was ordered to successfully complete the Real Estate Trading Services Remedial Education Course. Further, Mr. Rogers and Brian Rogers Personal Real Estate Corporation were ordered to be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,250.00.

Charles (Chuck) Edward Gardiner

ISSUE: Charles (Chuck) Edward Gardiner, associate broker, Multiple Realty Ltd., Vancouver, entered into a Consent Order with the Council that, while licensed as managing broker with Moneygen Realty Inc., Vancouver, he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he contravened section 6(2)(b) of the *Real Estate Services Act* and sections 3-1(1)(a) and (b) and 3-1(3) of the Council Rules in that he:

(a) failed to ensure that an Accountant's Report for the year ending May 31, 2010 included financial statements that were subject to review engagement by an accountant, as required by sections 7-7(1)(a) and (b) and 7-7(2)(b)(i) of the Council Rules;

(b) failed to ensure that the brokerage main-

tained proper books, accounts and other records, as required by section 25 of the *Real Estate Services Act* and sections 8-2(b) and 8-3(a) of the Council Rules; and

(c) failed to ensure that all monies received by the brokerage for strata fees, a security deposit, and any other pre-authorized payments were deposited into the brokerage trust account, as required by section 27(2) of the *Real Estate Services Act*.

RESULT: Charles (Chuck) Edward Gardiner was reprimanded, and was ordered not to apply as a managing broker for a period of one year from the date of Order herein. As a condition of licensing as a managing broker, he was ordered to successfully complete the Real Estate Trading Services Remedial Education Course. Further, he was ordered to pay enforcement expenses to the Council in the amount of \$1,000.00.

Alan John Nixon

DominionGrand Realty Corp.

ISSUE: DominionGrand Realty Corp., formerly known as Trillium Real Estate Corp., Vancouver, entered into a Consent Order with the Council that it committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* 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: Alan John Nixon, managing broker, DominionGrand Realty Corp., formerly known as Trillium Real Estate Corp., Vancouver, entered into a Consent Order with the Council that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by 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: DominionGrand Realty Corp. was reprimanded.

RESULT: Alan John Nixon was reprimanded and ordered to pay a discipline penalty to

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

RESULT: DominionGrand Realty Corp. and Alan John Nixon were ordered to be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,000.00.

Nadine Mary Westgate

ISSUE: Nadine Mary Westgate, managing broker, Statesmen Realty Corporation (Vrn) dba Realty Executives of the Okanagan (Vrn), Vernon, entered into a Consent Order with the Council that she committed professional misconduct within the meaning of section 35(1) of the *Real Estate Services Act* in that, contrary to section 3-1 of the Council Rules and section 6(2) of the *Real Estate Services Act*, she failed to ensure that the business of Realty Executives, including the supervision of its licensees, was carried out competently and in accordance with the Act, Regulation, Rules and Bylaws by failing to follow up to ensure that a licensee ceased offering to provide real estate services through an unlicensed entity.

RESULT: Nadine Mary Westgate was reprimanded and was ordered to pay enforcement expenses to the Council in the amount of \$1,000.00.

Rental Property Management Services

Pacifica First Management Ltd.

ISSUE: Pacifica First Management Ltd., Vancouver, entered into a Consent Order with the Council that it committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that it:

(a) contravened sections 6(1)(b) and 7(5) (a) of the *Real Estate Services Act* by providing real estate services by an unlicensed representative;

(b) contravened section 32 of the *Real Estate Services Act* by failing to make reasonable efforts to identify the persons entitled to stale-dated cheques set out in the trust reconciliation for the pooled rental property management services brokerage trust account and, if unable to do so, contact the administrator for the *Unclaimed Property Act*;

(c) contravened section 4-5 of the Council Rules by failing to ensure the licensee name is clearly indicated in the course

Disciplinary Decisions, *cont'd*

of providing real estate services as various agreements, bank statements, cancelled cheques, deposit books and invoices remained in the name of Jefferson Management Corporation;

(d) contravened section 6-1(1) of the Council Rules by remunerating an unlicensed representative of the brokerage for acting in a licensed capacity;

(e) contravened section 6-2 of the Council Rules by allowing an unlicensed representative of the brokerage to act in a licensed capacity to provide real estate services on behalf of the brokerage;

(f) contravened section 7-4(1) of the Council Rules by failing to have a managing broker be a signing authority on all trust accounts maintained by the brokerage; and

(g) contravened sections 3-1(1) and 3-1(3) of the Council Rules by failing to carry out its business in accordance with the Act and the Council Rules.

RESULT: Pacifica First Management Ltd. was reprimanded, and was ordered to pay a discipline penalty to the Council in the amount of \$5,000.00, pay the Council's audit costs to the Council in the amount of \$1,650.00, and pay enforcement expenses to the Council in the amount of \$1,000.00.

Mary Anne Kenwood

RioCan Management (BC) Inc.

ISSUE: RioCan Management (BC) Inc., Vancouver, entered into a Consent Order with the Council that it committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by:

(a) contravening section 7(5)(a) of the *Real Estate Services Act* in that it provided real estate services, namely rental property management services, through an unlicensed person; and

(b) contravening section 3(1)(a) of the *Real Estate Services Act* in that it provided real estate services through a branch office which was not licensed as a branch office of the brokerage.

ISSUE: Mary Anne Kenwood, managing broker, RioCan Management (BC) Inc., Vancouver, entered into a Consent Order with the Council that she committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening section 3-1(1)(b) of the Council Rules and section 6(2)(c) of the *Real Estate Services Act* in that she:

(a) failed to ensure that the business of the brokerage was carried out competently and in accordance with the Act, Regulations, Rules and Bylaws, by permitting an unlicensed person to provide rental property management services when this person was not licensed to do so; and

(b) failed to ensure that she was responsible for the control and conduct of the brokerage's real estate business by permitting the brokerage to provide real estate services in an unlicensed branch office of the brokerage, contrary to section 3(1)(a) of the *Real Estate Services Act*.

RESULT: RioCan Management (BC) Inc. was reprimanded, and was ordered to pay a discipline penalty to the Council in the amount of \$1,500.00 and pay the costs of the audit to the Council in the amount of \$225.00.

RESULT: Mary Anne Kenwood was reprimanded and ordered to successfully complete the Real Estate Trading Services Remedial Education Course.

RESULT: RioCan Management (BC) Inc. and Mary Anne Kenwood were ordered to be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,250.00.

Clifford Dean Raps

ISSUE: Clifford Dean Raps, managing broker, Taurus Commercial Real Estate Services Ltd., Surrey, entered into a Consent Order with the Council that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he contravened section 6(2) of the *Real Estate Services Act* by failing to ensure a licensee did not provide rental property management services generally and in this case, more specifically for two non-strata properties, and failed to ensure the brokerage did not advertise the licensee's services as general manager of the brokerage's property management division, both during a time when the licensee was licensed only to provide strata management services and was not licensed to provide other property management services.

RESULT: Clifford Dean Raps was reprimanded, and was ordered to pay a discipline penalty to the Council in the amount of \$2,000.00 and pay enforcement expenses to the Council in the amount of \$1,000.00. ■

Feedback?

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

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