

Report from Council

Don't Play Follow the Leader

Paying Referral Fees to Unlicensed Lead Generation Businesses is Prohibited

We all know that sales leads are important for a growing real estate business. But if you're tempted to use a lead generation service, stop to consider this: the *Real Estate Services Act* (RESA) prohibits the payment of referral fees to unlicensed people operating such services.

Recently, the Council has noticed an increase in both the numbers and the variety of websites whose main business is to identify people who wish to buy, rent or sell real estate. Typically, the unlicensed operators of these online lead generation services refer potential clients to licensees in exchange for a referral fee from the licensee. Some lead generation services position themselves as "immigration advisors," and seek payment from licensees in return for introducing them to off-shore buyers. Others, the Council has found, are licensees operating lead generation websites that do not identify their brokerages or even reveal the fact that the site's operators are licensed.

The problem? This activity—soliciting for the purpose of providing real estate services—requires a real estate licence. Websites that find people who are interested in buying, renting, or selling real estate, and that refer those people to licensees for a fee, are soliciting for the purpose of providing real estate services. As a licensee, you may only solicit names of persons who are interested in acquiring or disposing of real estate in the name of the brokerage with which you are licensed. You must not accept any remuneration in relation to real estate except through your brokerage. Licensees found to be operating lead generation services, outside of their brokerage, will be subject to discipline for contraventions of RESA and the Council Rules.



An unlicensed person can only make a referral to a licensee and be paid for it under the following circumstances:

- they do not engage in activities to solicit the names of persons who may be interested in acquiring or disposing of real estate, and
- the practice of making referrals and receiving referral fees is incidental to their main business.

So before you accept and pay for a referral from an online lead generation service, remember that licensees are prohibited from paying people who are not licensed, and who are not exempt from the requirement to be licensed, for the provision of real estate services. ■

For Further Information

Exemption for people providing referral services:

www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/10_506_2004#section2.11

Prohibition against paying unlicensed persons:

www.recbc.ca/licensee/rules.html#section6-1

Role of managing brokers in supervising the payment and receipt of referrals:

www.recbc.ca/pdf/rfc/2011february.pdf

This Issue:



- Don't Play Follow the Leader
- Think Before You Act: Understand the Risks of Project Marketing
- New Consent Order in Relation to Unlicensed Real Estate Services
- Co-listing Conundrums: How Does Designated Agency Affect Your Co-listing Agreement?

- Septic Sense: Selling Properties with Onsite Wastewater Treatment Systems
- Notice: Revision to Council Rules
- What To Do, And Not Do, If Your Licence Is Suspended
- Disciplinary Decisions

A Note from the Chair



Susan McGougan,
Chair

With the holiday season almost here, many of us find our thoughts turning to family and friends, and to enjoying the celebrations of the season with our loved ones. But even in the midst of the fun and festivities, we can always spare a thought or two for our professional responsibilities. That's why I encourage you to take the time to carefully review the articles in this *Report from*

Council newsletter and consider how the advice and guidance contained in these pages can help you to ensure that your professional practices are always in compliance with the *Real Estate Services Act* and its regulations, as well as with the Council Rules and Bylaws.

In this issue we draw your attention to the growing problem of unlicensed lead generation services, which are proliferating online (see our cover story). Make sure that you're not paying for referrals from any unlicensed lead generation services whose main business is soliciting for the purpose of providing real estate services. These businesses require a real estate licence. Licensees who operate lead generation services outside of their brokerages are also in contravention of the Council Rules and at risk of being investigated and possibly disciplined for their activities.

Project marketing for real estate developers is another risky area that licensees should be aware of, and on page three of this issue we tell you why: licensees can-

not provide real estate services outside of their brokerage, and all remuneration for real estate services must be paid into the brokerage's trust accounts, never directly to a licensee.

By turning to the Disciplinary Decisions at the back of the newsletter you'll note that there are cases in this issue of licensees disciplined for providing services separate from their brokerage, and for providing services for which they were not properly licenced. If you're tempted to provide real estate services outside of your brokerage, whether it's as a favour for a friend or for profit, remember: as a real estate licensee you may conduct real estate activities only in the name of your related brokerage, and *only* in the specific categories for which you are licenced.

Finally, if you'll be renewing your licence in the New Year, you should be aware that because of recent changes to the Council Rules you must report additional details about any bankruptcy proceedings (either personal or business-related) that were initiated over the past two years. Carefully review the expanded questions #2 and #3 in the "Information Respecting Reputation and Suitability" section of your renewal form to be sure you're including all the necessary information.

On behalf of Council members and staff, I wish you and your family a Merry Christmas, a happy holiday season, and best wishes for the New Year.

Susan McGougan
Chair

Office Closures

The Council office will be closed on

- **Thursday, December 25** for Christmas Day
- **Friday, December 26** for Boxing Day
- **Thursday, January 1, 2015** for New Year's Day
- **Friday, January 2, 2015.**

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STATISTICS

December 2014

Representatives: 18,295
Associate Brokers: 1,629
Managing Brokers: 1,308
Total Licensees: 21,232
Brokerages (including branch offices
and sole proprietors): 1,456

Role of the Council

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

Report from Council

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

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Think Before You Act

Understand the Risks of Project Marketing

As a real estate licensee, you know how to market and sell real estate. So it may seem like a natural extension to your business to begin offering project marketing services to real estate developers.

And, in fact, the Council has become aware that over the last few years, an increasing number of licensees are doing just that: setting up unlicensed companies that operate separately from the brokerages with which they are licensed, in order to provide project marketing solutions to developers.

Licensees who take this step need to be aware that they can easily find themselves on the wrong side of the *Real Estate Services Act* and the Council Rules. They may even potentially be the subject of a complaint or investigation by the Council.

The risk arises because, although *designing* a marketing plan may be an activity that does not require licensing, *executing* that plan is considered a licensed activity. In fact, it is by definition real estate advertising.

Project Marketing is Real Estate Advertising

Here is how real estate advertising is defined in the Council Rules:

“real estate advertising” means any form of identification, promotion, solicitation or representation relating to

- (a) real estate,
- (b) a trade in real estate, or
- (c) the provision of real estate services, including a sign or other notice relating to real estate, a trade in real estate or the provision of real estate services;

You may only provide services defined as real estate services in the name of and on behalf of the brokerage with which you are licensed.



(See Council Rules, www.recbc.ca/licensee/rules.html#section1-1)

In most instances, it is trading services that relate specifically to project marketing. According to section 1 of the *Real Estate Services Act*, “trading services” means

- (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

As a licensee, when you execute a marketing plan, you are making representations about real estate and you are find-

ing parties to acquire real estate. As the definitions above make clear, these are licensed activities that must only be done in the name of your brokerage.

Remember, once licensed under the *Real Estate Services Act*, you are “once a licensee, always a licensee.” **None** of the exemptions from licensing set out in the Real Estate Services Regulation apply. You may only provide services defined as real estate services in the name of and on behalf of the brokerage with which you are licensed and you may only receive related remuneration that is first paid into the trust of your brokerage—never directly.

Although the world of real estate development marketing may be attractive, remember to keep in mind these legislated restrictions, and avoid the risks of engaging in real estate advertising or providing real estate services outside of your brokerage. ■

New Consent Order in Relation to Unlicensed Real Estate Services

The Office of the Superintendent of Real Estate at the Financial Institutions Commission (FICOM) has advised that a new consent order in relation to unlicensed real estate services has been posted to the FICOM website at [www.fic.gov.bc.ca/pdf/enforce-](http://www.fic.gov.bc.ca/pdf/enforce-ment/restate/resa20140930.pdf)

[ment/restate/resa20140930.pdf](http://www.fic.gov.bc.ca/pdf/enforce-ment/restate/resa20140930.pdf). The order commits Jason Gee Sing Pao and Jason Gee Sing Pao dba M G Property Management Co. to cease conducting real estate services as defined in the *Real Estate Services Act* unless and until becoming appropriately licensed. ■

Co-listing Conundrums

How does designated agency affect your co-listing agreement?

Co-listings—when two brokerages or licensees agree to work together to sell a property—can sometimes result in complicated situations. As a licensee, you should be aware of the potential complications that can arise, and know how to handle these situations. For instance, take the case of Felix and Hector:

Felix and Hector are both licensees. Felix is licensed with ABC Realty Ltd. and Hector is licensed with XYZ Realty Ltd.

When Sally decides to sell her property, she chooses to co-list it with both brokerages. Felix and Hector are appointed as designated agents for Sally by their respective brokerages.

A week later, Felix begins working as a designated agent for buyers who decide they want to make an offer on Sally's home. Felix does not share any of the buyer's confidential information with Hector.

What are Felix's responsibilities to his clients?

Felix must obtain the consent of both Sally and the buyers before he can represent both parties in relation to this transaction. He must inform them about the limits to his duties and obligations to them that will result from this arrangement. If Felix is to become a dual agent with respect to both the seller and the buyers, he must treat both parties impartially. If the buyers want independent representation, they will not be able to get that from Felix.

In obtaining this consent, it is important for Felix to inform the buyers that he and Hector have co-listed Sally's property for sale and that Hector will be representing Sally in the negotiations. However, Felix must not allow the buyers to think that Felix will solely represent the buyers.

How is Hector affected?

So long as Felix does not share any of the buyers' confidential information with Hector, Hector is able to retain his sole agency status and can continue to act as



the designated agent of the seller. In this situation, Hector is the designated agent of the seller only and has no duties to the buyers, other than to act honestly and with reasonable care and skill.

Felix, however, is a designated agent for both the seller and the buyers, has received the consent of the two parties to act as a dual agent, and must treat them impartially.

Would this scenario be different if both Felix and Hector are with ABC Realty, and Sally co-lists her property with Felix and Hector acting as designated agents?

No. So long as Felix does not share any of the buyers' confidential information with Hector, Hector is still able to retain his sole agency status and continue to act as the designated agent of the seller only. Felix, however, is already a designated agent for both the seller and the buyers, has received the consent of the two parties to act as a dual agent, and must treat them impartially.

How is this different if Felix and Hector are a team that is licensed with ABC Realty Ltd.?

The essence of the team concept is that team members work together, using their combined years of experience and knowl-

edge to assist their clients. This is part of the value-added proposition that teams typically promote to their clients. Because the Hector and Felix Team share information about all their clients, Hector and Felix are not able to separate their agency relationships.

This means that Hector is not able to act as designated agent for Sally while Felix acts as designated agent for the buyers.

What if Felix and Hector are licensed with a brokerage that does not practice designated agency?

While most brokerages in BC practice designated agency, some continue to act under the system of brokerage agency. This means that whenever a client enters into an agency relationship with the brokerage, all licensees at that brokerage take on the same duties in relation to that client.

In brokerage agency, there is no designation of one licensee to act as a designated agent on behalf of one client while a different licensee acts as a designated agent on behalf of a different client. There are no information barriers created to retain a client's confidential information. Therefore, under brokerage agency, Felix and Hector, with the seller's and buyers' consent, would both be acting as dual agents. ■

Septic Sense

Selling Properties with Onsite Wastewater Treatment Systems

In BC, many homes outside major urban areas don't have access to a public sewer system. This means wastewater must be treated on the property, in accordance with the provincial Sewerage System Regulation, using what is known as an "onsite wastewater treatment system." According to statistics collected by the Ministry of Environment, there are currently about 250,000 onsite systems across the province.

For licensees representing sellers of properties with onsite wastewater treatment systems, there are a number of details they should be familiar with, in order to provide informed and competent service to their clients. Licensees may wish to consider the following questions when listing a property with an onsite wastewater treatment system:

Does the Sewerage System Regulation (SSR) apply to my client's property?

The Sewerage System Regulation (SSR), which came into force on May 31, 2005, covers onsite wastewater systems that:

- process a sewage flow of less than 22,700 litres per day;
- serve single-family systems or duplexes;
- serve different buildings on a single parcel of land; and
- serve one or more parcels on strata lots or on a shared interest of land.

The SSR requires that records of the construction of the onsite system, and of any subsequent alterations to it, be filed with the local health authority. This applies to all properties, including those in remote areas or unorganized territories, whether a building permit is required or not.

What about properties with systems constructed prior to May 31, 2005?

The SSR is not retroactive. However, the seller should be able to prove that the system was in compliance with the regulation in effect at the time the system was constructed. Permits were required for

systems built prior to May 31, 2005 and should be available at the local health authority. Please keep in mind that many documents have been lost/destroyed through the years, so the lack of information at the health unit may not necessarily mean that a permit was not taken.

Has the system been planned and installed according to the regulations?

Owners who have constructed a new onsite wastewater treatment system on or after May 31, 2005, or whose systems have been altered or repaired since that date, must have retained the services of an authorized person to plan, install and maintain the system. An authorized person is either a professional engineer or a Registered Onsite Wastewater

Practitioner (ROWP). Although systems constructed prior to May 31, 2005 are not subject to this requirement, it is highly recommended that system maintenance be performed by a ROWP.

ROWPS are registered with the Applied Science Technologists & Technicians of British Columbia (ASTTBC), which recognizes four categories of practitioners:

- **Planners**, who perform site and soil assessments, design systems, and create maintenance plans for systems,
- **Installers**, who install systems according to design plans,
- **Maintenance Providers**, who monitor and maintain systems, and
- **Private Inspectors**, who inspect and assess existing systems.

Continues on Page 6



For licensees representing sellers of properties with onsite wastewater treatment systems, there are a number of details they should be familiar with.

Continued from Page 5

Before beginning construction of an onsite wastewater treatment system, the authorized person must file the system's plans and specifications with the local health authority. Within 30 days of completing the installation of the system, the authorized person must file the following documents with the local health authority, and provide copies of all documents to the owner:

- a letter of certification;
- a plan of the system including an As-Built Drawing; and
- the Operating and Maintenance Manual.

Has the Use Changed?

Where a new use will be made of an existing onsite wastewater treatment system previously permitted under the 1985 Wastewater Treatment Regulation (for example, a house being built to replace a temporary or seasonal dwelling), an authorized person should conduct a site evaluation and a documented inspection of the system to determine if it is suitable for the new use.

If the system requires upgrading, all regulatory filing provisions apply, including plans, specifications and a site evaluation with report.

Has the system been adequately maintained?

All onsite wastewater treatment systems need regular ongoing maintenance. Once an onsite system is installed, upgraded or repaired, it is the homeowner's responsibility to ensure that the maintenance plan is followed. If the homeowner does not maintain the wastewater treatment system properly, malfunction and possible failure of the system can result, and the homeowner may need to pay for costly repairs or replacement of the disposal system.

The Sewerage System Regulation and the Sewerage System Standard Practice Manual (created by the Ministry of Health) stipulate who may design, install or maintain sewage systems. All work on onsite systems, such as repairs to systems, and any maintenance on systems, must be performed by an authorized person. This includes the regular monitoring and maintenance of septic tanks, treatment plants or processes and dispersal fields

(which may be required up to three times per year depending on usage and other conditions that may affect performance).

Have I obtained all required documentation for the system?

As a licensee acting for the seller of a property with an installed onsite wastewater treatment system, you should obtain the pertinent records from the local health authority in order to verify that:

- for a wastewater treatment system installed prior to May 2005, the appropriate permit has been issued and the system was installed with the approval and inspection of the appropriate department of the B.C. government; or
- for any wastewater treatment system installed after May 2005, that it was installed by an authorized person as defined in the Sewerage System Regulation and a Letter of Certification was filed with the local health authority; and
- records of any major repairs and/or upgrades to the system have been filed with the health authority.

Wastewater treatment systems may be subject to periodic inspections by the local government or the health authority may have issued a work order for a particular system. Licensees should check with the local health authority for the existence of such work orders and inspection reports.

Should the system be inspected?

Inspections of a property's onsite wastewater treatment system, which are a condition of sale by mortgage or insurance companies, or by prospective buyers, must be performed by an authorized person, either a ROWP registered as a Private Inspector or a professional engineer. ASTTBC recommends that sellers have an inspection prior to listing their property for sale in order to identify any necessary maintenance or repairs. This can simplify the disclosure to buyers and alleviate concerns.

Allow for appropriate time line to book an inspection and to gather all the required paperwork. Accessing the required documents from health authority offices or archives may take several days. Inspections of existing onsite wastewa-

ter treatment systems can be challenging and time-consuming, as they may be buried beneath mature landscaping, making the system in some cases difficult to locate and assess, as well as to perform any necessary maintenance and repairs.

Ensure the authorized person receives:

- all documents from the health authority,
- land title documents indicating the location of any reserve fields and/or any existing covenants for reserve field easements,
- records of past maintenance done on the system.

If the system is to be inspected, a clause such as the following should be included in the Contract of Purchase and Sale:

Sewage System Inspection Clause

Subject to the Buyer, at the Buyer's expense, receiving, reviewing and being satisfied with a report from an appropriate authorized person (as defined in the British Columbia Sewerage System Regulation ("Regulation")) concerning the operational function and condition of the components of the wastewater treatment system on the property ("System"), and compliance of the System with the Regulation on or before (date) .

This condition is for the sole benefit of the Buyer.

What if the inspection reveals problems with the system?

Existing systems that require repairs and/or replacement must be brought into compliance with the Sewerage System Regulation, with limited exceptions. In addition to determining that the system was appropriately installed, a buyer should determine whether any maintenance on the system is in compliance with the Maintenance Plan filed with the health authority.

What disclosure is required?

Sellers must disclose any known problems with a septic system. Typically, a record of pumping (of the septic tank) and a copy of the septic permit (if applicable) is usually sufficient for disclosure purposes. Filing with the health authority is only required if there has been a substantive change to the septic system.

Continues on Page 7

Continued from Page 6

If a Seller has confirmed that an existing wastewater treatment system has been properly installed, inspected and approved, the following clause should be suggested by buyers' agents for inclusion in an offer:

Seller Sewage System Representation and Warranty Clause

The Seller represents and warrants that:

- 1. the wastewater treatment system on the property ("System") was installed, inspected and approved by an authorized person as defined in the British Columbia Sewerage System Regulation; and*
- 2. a permit/letter of certification respecting the System is on file with the local health authority.*

If an inspection reveals that the wastewater treatment system for the property does not meet the necessary standards, the contract should provide a clause such as the following:

The Buyer acknowledges and agrees that the onsite wastewater treatment system ("System") does not meet the approved standards as required and defined in the British Columbia Sewerage System Regulation, and/or that a permit and/or letter of certification respecting the Sys-

tem is not on file with the local health authority. The Buyer acknowledges and agrees that the Seller has not made any representations nor given any express or implied warranties with respect to the System. The Buyer accepts the System, in its present condition, "as is, where is."

What if there's no wastewater system on the property?

In the case of a property without sewage services, the contract should provide a clause allowing the buyer to obtain a site assessment by an authorized person for an onsite wastewater treatment system.

Assessing Property for Wastewater Treatment System Clause

Subject to the Buyer, at the Buyer's expense, having the property assessed ("Assessment") by an appropriate authorized person (as defined in the British Columbia Sewerage System Regulation), to determine the feasibility of installing an onsite wastewater treatment system on the property ("System"), along with the cost associated with the installation of the System, and the Buyer being satisfied with the Assessment on or before (date).

This condition is for the sole benefit of the Buyer. ■

i For Further Information

Applied Science Technologists & Technicians of BC:
www.asttbc.org/

Onsite Wastewater Consumer Information Centre:
owrp.asttbc.org/c/index.php

BC Sewerage System Regulation:
www.bclaws.ca/EPLibraries/bclaws_new/document/ID/free-side/22_326_2004

Sewerage System Standard Practice Manual:
www.health.gov.bc.ca/protect/lup_standards.html

Association of Professional Engineers and Geoscientists of BC Professionals for Sewerage System Regulation:
www.apeg.bc.ca/Member-Directories/Professionals-for-Sewerage-System-Regulation

Our thanks to the Applied Science Technologists and Technicians of BC for their review and feedback on this article.

Notice: Revision to Council Rules

The Council, at a meeting on November 12, 2014, approved a revision to a rule adopted at its September 30, 2014 meeting. This rule, as revised, will take effect January 1, 2015.

The revision relates to section 2-21(2)(f)

of the Council Rules: the word "licensee" is deleted at the end of subsections (i), (ii) and (iii) and replaced with the word "business." Use of the word "licensee" was a typographical error.

Amendments to section 2-21 of the

Council Rules, including this revision, clarify the information required from existing licensees regarding any bankruptcy, insolvency, or receivership proceedings in which they are involved, either personally or as the director, officer or partner of a business.

Sec. 2-21 Licensee must give notice of discipline, bankruptcy, or criminal proceedings.

....

(2) A licensee must promptly notify the council, in writing, if any of the following circumstances apply:

....

- (f) any business that the licensee owns, or of which the licensee has been a director, officer or partner at any time during the past 2 years, is the subject of any bankruptcy, insolvency or receivership proceedings, including:
- (i) an application for a bankruptcy filed against the licensee business,
 - (ii) an assignment in bankruptcy made by the licensee business,
 - (iii) a bankruptcy order made against the licensee business,
 - (iv) a proposal under Division I of Part III, or a consumer proposal made under Division II of Part III, of the *Bankruptcy and Insolvency Act*, or
 - (v) an insolvency proceeding, including a receivership or an arrangement under the *Companies' Creditors Arrangement Act*;

What To Do, And Not Do, If Your Licence Is Suspended

Over the past year, the Council has suspended the licences of 29 licensees, for periods ranging from a few days to several months. A licence suspension can be for any length of time, but regardless of how long the suspension is for, one thing does not change: an individual whose licence has been suspended must cease all licensed real estate activity for the period of the suspension (RESA, section 20).

While your licence is suspended, you cannot be involved in any listing, selling, property management, or strata management activities. Your brokerage must promptly assign any listings or clients to another licensee. You must not communicate with any clients or any consumers about real estate services during the period of your suspension. You must also stop all advertising and promotions. You'll need to cancel or remove all print, TV and radio ads, information on your website and social media channels and/or your brokerage's websites and social media, advertisements on buses, bus benches, bus shelters, any signage on your car, and certainly any "for sale" and "sold" signage.

This list isn't exhaustive—there are other forms of advertising not mentioned here, and if your licence has been suspended you must think carefully about all the ways in which you have advertised your services,

to be sure that these advertisements are cancelled during the suspension.

If you are suspended, you will be subject to a Council suspension audit that searches out any real estate activity, including advertising, that occurred during the suspension period. If it is discovered that any real estate activities have been conducted, this could result in further discipline against you. To make sure you don't suffer the consequences of violating a suspension, take steps to be certain that you've complied fully with the terms of the suspension and have stopped all licensed activities. ■

For Further Information

Real Estate Services Act, section 20
www.bclaws.ca/civix/document/id/completestatereg/04042_01#section20

Licence Suspension/Cancellation Procedure
www.recbc.ca/bsm_section/licence-suspensioncancellation-procedure/

Consequence of Discipline for Professional Misconduct. Report from Council, April 2011
www.recbc.ca/pdf/rfc/2011april.pdf

Discipline

The Council has the ability to impose a number of different sanctions against licensees who have committed professional misconduct or conduct unbecoming a licensee. These range from:

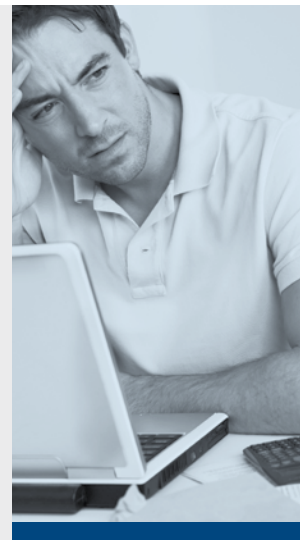
- Reprimanding the licensee
- Suspending the licensee's licence for a period of time and/or until certain conditions are met
- Cancelling the licensee's licence
- Imposing restrictions or conditions on the licensee's licence
- Requiring the licensee to cease or carry out any specified activity related to the licensee's real estate business
- Enroll in and complete a course of study or training
- Pay for enforcement expenses incurred by RECBC
- Pay a disciplinary penalty in an amount of not more than \$20,000 in the case of a brokerage or former brokerage, or not more than \$10,000 in any other case.

All discipline findings, whether arrived at through a Consent Order or hearing, are summarized and published in the *Report from Council* newsletter and on the Council's website. ■

Licence Suspension/Cancellation Procedure

When the licence of an individual (representative, associate broker, or managing broker) is suspended, the licensee must cease all licensed activity for the period of the suspension. A licensee may attend the office during the terms of the suspension. However, he/she must not:

- be involved in any listing, selling, or management activity (including managing broker activities);
- host open houses or solicit sellers, buyers, landlords, or tenants in any manner;
- provide advice or guidance to a consumer with regards to a listing contract, property management contract, or a Contract of Purchase and Sale;
- meet with owners to obtain new listing or property management contracts;
- present or negotiate offers;
- enter into a rental contract on behalf of the brokerage;
- communicate with consumers about any real estate transaction or service agreement;
- present or negotiate an offer or any form of service agreement; or
- perform any other activity for which a licence under the Act is required. ■



Disciplinary Decisions

Since the October 2014 *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

Robert James Harrington Harrington Homes Realty Incorporated dba Price Smart Realty

ISSUE: Robert James Harrington, managing broker, Harrington Homes Realty Incorporated dba Price Smart Realty, Langley, entered into a Consent Order with the Council that he:

File #11-338

(a) committed conduct unbecoming within the meaning of section 35(2) of the *Real Estate Services Act* by encouraging unlicensed activity and discouraging members of the public from becoming licensed under the *Real Estate Services Act* to provide real estate services and by publishing false or misleading statements on “iRealter.com” as follows:

- (i) “offer a real estate application program to members of the public to be able to provide real estate services to others without being licensed”;
- (ii) “If you chose to purchase a local civic government business license you are now a legally licensed government approved Real Estate Agent, and “irealtor.com...replaces all Real Estate Council, Real Estate Board and Real Estate Office functions with Smart Software”;
- (iii) by publishing on his www.pricessmartrealty.ca website comments that are derogatory to the real estate industry such as: “The agent is basically a matchmaker between sellers and buyers...The agent cannot recommend anything or anyone, accurately measure up anything or take any responsibility for anything”.

File 12-406

(a) as managing broker, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening section 6(2) of the *Real Estate Services Act* and section 3-1(1)(b) of the Council Rules by failing

to ensure that a brokerage representative was properly licensed to provide rental property management services from March 2012 to January 31, 2013 in accordance with section 3(1)(a) of the *Real Estate Services Act*.

File 12-474

(a) committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening section 6(2) of the *Real Estate Services Act* and section 3-1(1) of the Council Rules by permitting a licensee to provide rental and strata management services when he was not licensed to do those services.

File 13-117

(a) committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he:

- (i) contravened section 4-7 of the Council Rules by publishing false or misleading advertising on websites to the effect that licensing by the Real Estate Council of British Columbia was not necessary to provide real estate services, more particularly as follows:
 - (I) “you can help your clients list, sell and buy homes and property across the world with our VivaState.com Agent App and you will get paid directly from the buyer’s or seller’s legal representative with your commission deducted from the proceeds of the sale. There are no office, licensing, or board fees.”;
 - (II) “VivaState is: a virtual Real Estate council, board and association (without the council, board and association fees).”;
 - (III) “licensed VivaState Agents cannot List on the traditional Multiple Listing Service, however, they can act to assist buyers and collect the full BUY SIDE or sub-agent commission, often amounting to thousands of dollars.”;
 - (IV) advertised on YouTube “Get Licensed without taking courses”;

(V) advertised a fictitious licence under the name “Real Estate Salespersons License”, “The Real Estate Council of iRealter.com” and “The Real Estate Council for VivaState.com”;

(VI) advertised “VivaState is the world’s first Real Estate software Program App that will make anyone a successful Real Estate Agent. The program licenses you as a VivaState Real Estate agent allowing you to earn great real estate commissions without taking any courses”...; and

(VII) advertised “my new program also licenses real estate agents, handles deposits and pays you out your commission from the buyers lawyer. So if you are tired paying full time fees for a part time Real Sales job...try it. VivaState.com”

(ii) contravened section 4-8 of the Council Rules by publishing properties advertised for sale on other websites for sale on VivaState.com without the consent of the owners of the said properties;

(iii) contravened sections 3-1(a) and 7(3) (a) of the *Real Estate Services Act* by providing trading services under the name “Robert Realtor” in that he listed multiple properties for sale on the VivaState.com website when he was not licensed to provide trading services and by providing these real estate services separate from his brokerage.

(b) committed conduct unbecoming a licensee within the meaning of section 35(2) of the *Real Estate Services Act* in that:

(i) he advertised and encouraged members of the public to bypass licensing through the Real Estate Council of British Columbia and become licensed through VivaState.com which was not a licensing authority for real estate licensees in the province of British Columbia; and

(ii) made disparaging remarks about the

Disciplinary Decisions, *cont'd*

Real Estate Council of British Columbia on the website as follows: "I have been constantly fined, audited, bullied and shut down by the BC Real Estate Council who does not want successful agents but needs lots of unsuccessful agent for fees... I have just launched VivaState.com a smart transaction real estate program that brings into the 21st century and licenses you for FREE!"

File 12-406

ISSUE: Harrington Homes Realty Incorporated dba Price Smart Realty, Langley, 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(5)(a) of the *Real Estate Services Act* in that it provided rental property management services through a person that was not licensed to provide those services.

RESULT: Robert James Harrington was subject to an Order of a discipline committee that his licence be cancelled effective November 26, 2014.

RESULT: Harrington Homes Realty Incorporated dba Price Smart Realty was subject to an Order of a discipline committee that it be reprimanded.

RESULT: Robert James Harrington and Harrington Homes Realty Incorporated dba Price Smart Realty were subject to an Order of a discipline committee that they be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,250.00.

Necker Tsz Wing Kwok

ISSUE: Necker Tsz Wing Kwok, representative, Selmak Realty Limited, Vancouver, entered into a Consent Order with the Council that he committed professional misconduct within the meaning of section 35(1)(a) and (g) of the *Real Estate Services Act* in that he: (a) made a false and misleading statement on section 7 of the Application for Licence and the Application for Licence Renewal signed January 20, 2013 and May 23, 2013, respectively; and (b) contravened section 2-21(2)(a) of the Council Rules by failing to notify the

Council that he was subject of an investigation or disciplinary proceeding by the Insurance Council and failed to promptly notify the Council in writing that his licence, under the Insurance Council, was suspended by Order dated June 26, 2013.

RESULT: Necker Tsz Wing Kwok was subject to an Order of a discipline committee that he: (a) be suspended for thirty days, from October 22, 2014 to November 20, 2014 (inclusive); (b) at his own expense, register for and successfully complete the Real Estate Trading Services Remedial Education Course; and (c) pay enforcement expenses to the Council in the amount of \$1,250.00.

Marianna Murphy

ISSUE: Marianna Murphy, representative, Orange Bridge Realty Ltd. dba Royal LePage Parksville-Qualicum Beach Realty, Qualicum Beach, 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 3-4 of the Council Rules in that she listed and offered a manufactured home for sale without proof of a valid CSA sticker or Silver Label as required by section 21 of the Electrical Safety Regulation of the *BC Safety Standards Act*.

RESULT: Marianna Murphy was subject to an Order of a discipline committee that she: (a) be reprimanded; (b) pay a discipline penalty to the Council in the amount of \$2,000.00; (c) at her own expense, register for and successfully complete the Real Estate Trading Services Remedial Education Course; and (d) pay enforcement expenses to the Council in the amount of \$1,250.00.

Jess Francis Laframboise Tantalus Mountain Realty & Management Ltd.

ISSUE: Tantalus Mountain Realty & Management Ltd., Whistler, entered into a Consent Order with the Council that it committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening section 7-7(1) of the Council Rules in that it failed to file an Ac-

countant's Report with the Council by the prescribed date.

ISSUE: Jess Francis LaFramboise, managing broker, Tantalus Mountain Realty & Management Ltd., Whistler, entered into a Consent Order with the Council that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he:

(a) failed to fulfill 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 (b) failed to ensure that the Accountant's Report was filed with the Council by the prescribed date, contrary to section 3-1(1)(a) and (b) and 3-1(3) of the Council Rules.

RESULT: Tantalus Mountain Realty & Management Ltd. was subject to an Order of a discipline committee that it be reprimanded.

RESULT: Jess Francis LaFramboise was subject to an Order of a discipline committee that he be reprimanded.

RESULT: Tantalus Mountain Realty & Management Ltd. and Jess Francis LaFramboise were subject to an Order of a discipline committee that they be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,250.00.

Jason David Upton Aedis Realty Limited

ISSUE: Aedis Realty Limited, 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) of the Council Rules in that it failed to file an Accountant's Report with the Council by the prescribed date.

ISSUE: Jason David Upton, managing broker, Aedis Realty Limited, Vancouver, entered into a Consent Order with the Council that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he:

Disciplinary Decisions, *cont'd*

(a) failed to fulfill 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

(b) failed to ensure that the Accountant's Report was filed with the Council by the prescribed date, contrary to section 3-1(1)(a) and (b) and 3-1(3) of the Council Rules.

RESULT: Aedis Realty Limited was subject to an Order of a discipline committee that it be reprimanded.

RESULT: Jason David Upton was subject to an Order of a discipline committee that he be reprimanded.

RESULT: Aedis Realty Limited and Jason David Upton were subject to an Order of a discipline committee that they be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,250.00.

Blaine Angus Nicholson Blaine Nicholson Personal Real Estate Corporation

ISSUE: Blaine Angus Nicholson and Blaine Nicholson Personal Real Estate Corporation, Dawson Creek Realty Ltd. dba Re/Max Dawson Creek Realty, Dawson Creek, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that they contravened section 3-1(1)(a) of the Council Rules in that he failed to be actively engaged in the management of Dawson Creek Realty Ltd. dba Re/Max Dawson Creek Realty while he remained as a licensed managing broker for the said brokerage.

RESULT: Blaine Angus Nicholson and Blaine Nicholson Personal Real Estate Corporation were subject to an Order of a discipline committee that they: (a) be reprimanded; and (b) be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,250.00.

Marianne Zaragoza Fernandez (King) now known as Miller

ISSUE: Marianne Zaragoza Fernandez (King) now known as Miller, associate

broker, 2 Percent Westview Realty, Richmond, entered into a Consent Order with the Council that, while licensed as a representative with Realty One Homes Ltd., Surrey, she committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening section 3-4 of the Council Rules in that she failed to act with reasonable care and skill when providing real estate services by:

(i) advising the RTO Tenant that although the by-laws for the strata prohibited rentals, the Complainants would be permitted to rent the property to the RTO Tenant as a rent-to-own tenant;

(ii) failing to make independent inquiries as to whether the Complainants would be permitted to rent the property to the RTO Tenant; and

(iii) failing to advise the RTO Tenant that he should make independent inquiries as to whether he would be permitted to rent the property.

RESULT: Marianne Zaragoza Fernandez (King) was subject to an Order of a discipline committee that she: (a) be reprimanded; (b) as a condition of continued licensing, at her own expense, register for and successfully complete the Real Estate Trading Services Remedial Education Course; and (c) upon relicensing, pay enforcement expenses to the Council in the amount of \$1,000.00.

Strata Management

Allan Charles Browne Homelife Glenayre Realty Chilliwack Ltd.

ISSUE: Allan Charles Browne, managing broker, Homelife Glenayre Realty Chilliwack Ltd., Chilliwack, entered into a Consent Order with the Council that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he contravened section 3-1(1)(b) of the Council Rules in that he failed to ensure that the business of the brokerage was carried out competently and in accordance with the act, regulations, rules and bylaws in that he:

(a) permitted the brokerage to enter into an arrangement with an afterhours emergency services provider to provide first responder emergency services to the

strata corporation directly without first obtaining a direction from the strata manager or the brokerage;

(b) failed to ensure that the written services agreement stipulated the amount of the fees charged by the brokerage to the owners for late payment of strata fees, and also the fees charged for NSF cheques paid by the owners.

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

(a) contravened section 5-11(2)(b) of the Council Rules in that between April 1, 2010, and October 22, 2012, it failed to disclose to its strata corporation client in its written services agreement the amount of the fees it charged to owners when a reminder letter was required to be sent for nonpayment of strata fees and also the amount of an NSF charge to the owners when a strata fee was returned by the financial institution as NSF.

RESULT: Allan Charles Browne was subject to an Order of a discipline committee that he: (a) be reprimanded; and (b) successfully complete the Broker's Remedial Education Course.

RESULT: Homelife Glenayre Realty Chilliwack Ltd. was subject to an Order of a discipline committee that it be reprimanded.

RESULT: Allan Charles Browne and Homelife Glenayre Realty Chilliwack Ltd. were subject to an Order of a discipline committee that they be jointly and severally liable to: (a) pay a discipline penalty to the Council in the amount of \$1,000.00; and (b) pay enforcement expenses to the Council in the amount of \$1,250.00.

Kevin Donald Green Supplemental Hearing Decision With Respect To Enforcement Expenses

ISSUE: Kevin Donald Green, associate broker, Southview Property Management Inc., Richmond, was found by a Discipline Hearing Committee, in a hearing

Disciplinary Decisions, *cont'd*

decision dated November 18, 2013, to have committed professional misconduct while licensed with Croft Agencies Ltd., Surrey. That decision was published on the Council website on March 24, 2014 and in the April 2014 *Report from Council*. Further, it was posted on CanLII on May 6, 2014. The Discipline Hearing Committee met to hear submissions with respect to the issue of enforcement expenses on August 15, 2014.

RESULT: Kevin Donald Green was subject to a Supplemental Order of a discipline committee that he pay enforcement expenses to the Council in the amount of \$2,000.00.

Rental Property Management

Natalia Garbuzova

Kevin John Shaughnessy

ISSUE: Natalia Garbuzova, representative, New Century Real Estate Ltd., Vancouver, entered into a Consent Order with the Council that, while licensed with Pirooz Zarrabian dba Essential Real Estate Services, Vancouver, she committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that she provided rental property management services to a client in respect of the Property without having a written services agreement in place, and later entered into a written services agreement on behalf of the brokerage with someone other than the reg-

istered owner of the Property, contrary to sections 3-4, 5-1(2)(b) and 5-1(3)(a) of the Council Rules.

ISSUE: Kevin John Shaughnessy, representative, New Century Real Estate Ltd., Vancouver, entered into a Consent Order with the Council that, while licensed with Pirooz Zarrabian dba Essential Real Estate Services, Vancouver, he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he provided rental property management services to a client in respect of the Property without having a written services agreement in place, and later entered into a written services agreement on behalf of the brokerage with someone other than the registered owner of the Property, contrary to sections 3-4, 5-1(2)(b) and 5-1(3)(a) of the Council Rules.

RESULT: Natalia Garbuzova was subject to an Order of a discipline committee that she be reprimanded.

RESULT: Kevin John Shaughnessy was subject to an Order of a discipline committee that he be reprimanded.

RESULT: Natalia Garbuzova and Kevin John Shaughnessy were subject to an Order of a discipline committee that they be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,250.00.

Suzana Honjo

ISSUE: Suzana Honjo, currently unlicensed, entered into a Consent Order with the Council that, while licensed as a representative with RIF – Rent It Furnished Inc. dba Rent It Furnished Realty, Vancouver, she committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that she:

(a) contravened section 7(3)(a) of the *Real Estate Services Act* by providing real estate services separate from her brokerage, in that she provided real estate services to Wesgroup whilst employed as a building caretaker at XXXX Barclay Street, Vancouver by way of advertising rental properties and dealing with tenants/landlord matters; and

(b) contravened section 7(3)(b) of the *Real Estate Services Act* by accepting remuneration related to real estate services from a person other than her brokerage, in that she was employed by Wesgroup and received a salary for that employment, where those services to Wesgroup included real estate services.

RESULT: Suzana Honjo was subject to an Order of a discipline committee that she: (a) be reprimanded; (b) should she apply to be relicensed, at her own expense, register for and successfully complete the Real Estate Trading Services Remedial Education Course; and (c) should she apply to become relicensed, pay enforcement expenses to the Council in the amount of \$1,250.00. ■

Feedback?

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

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