

Council Message

Council responds to industry request

I want to begin by thanking the real estate brokers who responded to RECA's survey regarding a proposed amendment to section 95 of the *Real Estate Act* Rules dealing with real estate brokerage trust accounts. More than 100 brokers responded, and the majority voiced their support of the proposed amendment. The amendment means that under certain conditions a real estate brokerage may not be required to open or maintain a trust account.

The Alberta Real Estate Foundation (AREF) raised this issue with Council in order to reduce the number of inactive real estate brokerage trust accounts, which would therefore assist in eliminating bank service fees on inactive trust accounts. Council responded by taking the issue to industry members as a whole and, having heard that the vast majority of respondents were in favour of the amendment, approved it at their January meeting. To read more about the change to section 95, please review the article later on in this edition of the Regulator.

Council is responsive to industry needs and it encourages industry associations to approach them when new concerns arise within the industry that Council may be able to address.

Development of Lloydminster Real Estate Forms

Over the course of the past year, Council has worked extremely closely with members of the REALTORS® Association of Lloydminster and District to develop real estate relationship forms, for exclusive use by members of the REALTORS® Association of Lloydminster and District, which take into consideration the unique position of real estate industry members in Lloydminster. The forms meet the regulatory requirements of Alberta and Saskatchewan.

Council continues to work with representatives from Lloydminster to ensure Lloydminster industry members have the tools they need to carry out their duties in accordance with the legislation.

All sides agree that this process is a tremendous example of what can be accomplished when industry organizations and associations and RECA work together to develop the information and resources to meet industry needs.

Review of Phase 1 REAP

As part of Council's three year Strategic Plan established in 2008, RECA's Real Estate

Education Committee (Committee) is currently conducting a review of Phase 1 of the Real Estate Associates' Program (REAP), the Introduction to a Career in Real Estate course (Course). Specifically, the Committee is examining whether the Course should be a mandatory component within REAP. The Committee met in January, and has begun its review. A key component in the Committee's deliberations is to receive feedback from industry stakeholders such as new industry members that completed the course prior to entering the industry, real estate brokers who have hired one of these new industry members, and real estate industry associations.

The Committee has requested that the brokers and new industry members complete an online survey on various merits of the course no later than March 24, 2010. Individual real estate industry associations will be contacted directly. If you have completed the Phase 1 course and/or are a real estate broker who would like to respond to the survey, but did not receive the survey request email – please contact RECA through communications@reca.ca

I am pleased that we have launched the new Re-licensing Education Program (REP) course (Mortgage Broker Update 2009-2010) for mortgage broker industry members. The course is available through the education portal of the RECA website at www.reca.ca, and then click "RECA Education." The real estate REP course for 2009-2010 was launched in October and I am pleased to report RECA has received a very positive response from course participants. I encourage those industry members who have not completed their appropriate course to enroll in the course now.

I recently had the pleasure of attending, along with five of my Council colleagues, the AREA AGM and Leadership Day in Calgary. We all appreciated the opportunity to talk to industry members from throughout the Province and to explore issues such as those related to designated agency and the evolving responsibilities of RECA and AREA in our respective education roles. Hearing directly from such a wide range of industry members and representatives of the local boards provides very useful information for all of us in our role on the Council.

RECA Introduces Expedited Investigation Process

In late 2009, RECA introduced an expedited investigations process to deal with possible conduct deserving of sanction that is of a less serious nature. The new expedited investigations process is part of RECA's commitment to focusing on its internal processes and its provision of core services in the most efficient, cost-effective manner possible.

RECA investigations staff have a strict set of criteria to follow in determining if a file should be considered for the expedited investigation process.

That criteria requires that:

1. The investigation is limited to a maximum of two issues.

- 2.The effect of the conduct on the public is minimal.
- 3.The industry member did not unduly benefit from the alleged misconduct.
- 4.The industry member does not have a sanction history related to the issue(s) in question.
- 5.The conduct was not intentional and is not unreasonable given the industry member's licence history/experience and/or recent legislative changes.
- 6.The industry member reacted positively and did not attempt to conceal the misconduct.
- 7.The nature of the misconduct does not relate to dishonesty, fraud or breach of trust or affect the integrity of the industry.

Benefits to all sides

Moving files through the investigation process in an expedited manner benefits the complainant(s), the industry member and RECA itself.

Complainants are able to have their concerns addressed by RECA through its disciplinary processes in a timely manner. Industry members subject to an investigation are much less likely to have the matter hanging over their heads and worrying them for an extended period of time. And, RECA can more efficiently and cost-effectively close its investigation files.

Industry members have the same rights during an expedited investigation as they have during the full investigation process. If in the early stages of the expedited investigations process it becomes clear that the facts of the matter are in dispute, the file will likely be referred for a full investigation.

For more information

For more information about the expedited investigations process, please see the Guide to Expedited Investigations for Industry Members on the RECA website at www.reca.ca

Referrals – Industry Member Requirements

Summary: An industry member may refer a person to any industry member or other service provider, and receive a referral fee, but he or she must provide a written disclosure of the referral to the person being referred. Industry members must also be aware of their obligation to protect their client's personal information and the requirement to obtain the client's consent before releasing the client's contact information to a third party. [See: *Real Estate Act Rules s.1(1)(bb), s.44, s.45(c), s.54(c), s.70(c)*]

The current *Real Estate Act Rules*, approved by the Real Estate Council of Alberta (RECA), came into effect October 1, 2006. The Rules, as they relate to the practice of making and

receiving referrals, particularly within the real estate and mortgage brokerage industries, reflect a major change in the approach previously taken by RECA to this area of industry practice. A “referral” means “the act of recommending or directing a person for service, assistance, or business to another person or business.” [*Real Estate Act Rules*, s.1(1)(bb)]

Consent of Client to Referral

The practice of making referrals, in exchange for a fee or some form of compensation, is a common business practice within the real estate and mortgage brokerage industries. While the *Real Estate Act Rules* acknowledge and regulate this practice, it is important for industry members to comply with their common law and regulatory obligations concerning client information.

It is a general obligation of all professionals providing services to the public to keep their client information confidential. The same obligation applies to industry members trading in real estate, dealing in mortgages or providing real estate appraisal services.

Under the *Real Estate Act Rules*, “confidential information” means “any information concerning the client including the client’s financial or personal situation, the client’s real estate and the transaction involving the client.” The obligation to maintain client confidentiality applies to all industry members in the course of conducting business (s. 44, *Real Estate Act Rules*). This general requirement is subject to any legislative obligation to disclose client information or if the client has provided informed written consent.

In the course of making a referral, the type of information an industry member may be asked to provide to another industry member or service provider will vary. Some referrals may involve basic contact information (e.g. name and telephone number) whereas some may require details concerning the person’s real estate, mortgage or appraisal requirements.

In all cases, the information must be treated as confidential and cannot be released to a third party without first obtaining the express written consent of the client.

Referral Disclosure Requirements

When an industry member refers any person to any industry member or service provider and the industry member knows he or she may receive a referral fee, remuneration or benefit for making that referral, the industry member must disclose in writing:

- (a) the industry member has forwarded the person’s name and contact information to that service provider; and,
- (b) the industry member may be entitled to receive a referral fee, remuneration or benefit from the service provider for making the referral.

An industry member is required to retain a copy of the consent to release the client’s information and disclosure of the referral mentioned above. Electronic documentation e.g. email

confirmation is considered written consent and disclosure for the purposes of this requirement. If an industry member utilizes email for this purpose, a hard copy of the email consent and disclosure should be printed and placed in the client's file, though it is also acceptable to maintain the email in electronic form within the brokerage's electronic record keeping system.

Know the Person Your Client is Being Referred To

It is important to know the industry member or service provider a client is being referred to. In addition to ensuring the individual is authorized as an industry member, it is important to ensure the person is competent to provide the services required by the client.

If an industry member makes a referral to a person the industry member believes to be an industry member, it is the responsibility of the industry member making the referral to take reasonable steps to ensure the person in question is in fact authorized to carry out the activities for which the referral is made.

An easy way to determine if an individual is authorized as an industry member in Alberta is to visit the RECA website at www.reca.ca and utilize the "Search for an Industry Member" function. This public search tool allows industry members to determine if any individual they are dealing with is authorized by RECA to trade in real estate (real estate brokers), deal in mortgages (mortgage brokers) or conduct real estate appraisals (real estate appraisers) in the Province of Alberta. If an industry member wishes to refer a client to an industry member carrying on business outside the Province of Alberta, there are several steps that can be taken to determine whether that individual is properly authorized in their provincial or state jurisdiction.

If the individual is believed to be a real estate industry member, the Association of Real Estate Licence Law Officials (ARELLO) is an international organization that provides a special website (www.ARELLO.com) for this purpose. ARELLO.com allows a person to verify whether a particular individual is duly licensed in a member jurisdiction. Most provinces and states in North America are members of ARELLO and participate in this "Real Estate Licence Verification" database.

If the individual cannot be verified as an industry member on www.ARELLO.com, RECA recommends searching the website of the licensing authority in the province or state in question. If the website does not provide an online licence search function, RECA recommends contacting the licensing authority directly to confirm where a particular individual is duly licensed in that province or state.

Referral Fees are Paid and Received Through the Brokerage

Referrals of clients to other brokerages are generated by the broker, associate brokers or associates on behalf of the brokerage with which they are registered. Therefore, all referral fees are paid out by and received by the brokerage. The individuals registered to a brokerage as brokers, associate brokers or associates can never pay the referral fee out of their own account

or receive the referral fee directly. The brokerage, upon receiving a referral fee, pays its registrants according to his or her contract with the brokerage.

RECA Launches Mortgage REP Course Online

The Real Estate Council of Alberta is pleased to announce the launch of the Mortgage Broker Update 2009-2010 course. This is the Re-licensing Education Program (REP) course mortgage brokerage industry members are required to complete before renewing their registration in September 2010.

The course can be taken on an 'any time, any place, any pace' basis. Course completion time will vary based on the individual. Industry members are able to complete the course in segments, as the course is built to remember where an industry member left off and return him or her to that location in the course upon logging in again.

Mortgage Broker Update 2009-2010 was developed to enhance industry members' understanding of the *Real Estate Act*, Rules and Regulations; create awareness of current industry issues; and, review relationship options and disclosure requirements with borrowers and lenders.

The online course is available at no cost through the RECA website at www.reca.ca. Simply click on RECA Education, then the Mortgage Broker Update 2009-2010 course link, and begin the enrollment process. As with all RECA Education online courses, industry members require their RECA ID number, which they are to obtain from their brokers.

Annual Report Available

The Real Estate Council of Alberta's 2008-2009 Annual Report is now available on the RECA website at www.reca.ca.

Pursuant to section 16 of the *Real Estate Act*, RECA is required to compile licensing, administrative and financial information from the previous fiscal year in an annual report, and deliver that report to the Minister of Service Alberta within 120 days of the end of the fiscal year. RECA's fiscal year ends on September 30.

This year's Annual Report includes:

- RECA's mandate and governance model;
- Members of Council;
- An expanded committees section;
- Message from the 2008-2009 Council Chair, Ralph Salomons;
- Message from RECA executive director, Bob Myroniuk;
- Extensive licensing and information services statistics;
- Expanded website statistics and education information;
- Extensive audit and investigations statistics;
- Disciplinary action statistics;
- Information and statistics pertaining to the Real Estate Assurance Fund;
- Summarized audited financial statements.

Your feedback on RECA publications is always welcome. Comments on the 2008-2009 Annual Report can be sent to communications@reca.ca.

Real Estate Trust Account Requirements Amended

At its January 2010 meeting, Council approved an amendment to section 95 of the *Real Estate Act* Rules (Rules) that under certain conditions a real estate brokerage may not be required to open or maintain a trust account. Where a brokerage does not receive money in trust for a client or commissions or remunerations payable to another brokerage, the brokerage does not have to maintain a trust account.

Previously, sections 95 and 97 of the Rules required a brokerage to open and maintain at least one trust or pooled trust account for the deposit of funds received on behalf of clients or owners of real estate managed under real estate management agreements, and all payments received by a brokerage as or on account of commission or other remuneration payable to another brokerage.

The amended section 95 allows a brokerage that does not receive funds in trust on behalf of a client or commissions payable to another brokerage (sections 95 and 97 of the Rules), to choose whether or not to open and maintain a trust account. To view the amended legislation go to www.reca.ca and go to the Legislation & Info Bulletins menu.

This amendment was made at the request of the Alberta Real Estate Foundation (AREF) in order to reduce the number of inactive real estate brokerage trust accounts, which would assist in eliminating bank service fees on inactive trust accounts that are paid by AREF.

In December 2009, RECA distributed a survey regarding the proposed amendment to all Alberta real estate brokers. RECA received more than 100 responses, with the majority of brokers responding in favour of the proposed amendment.

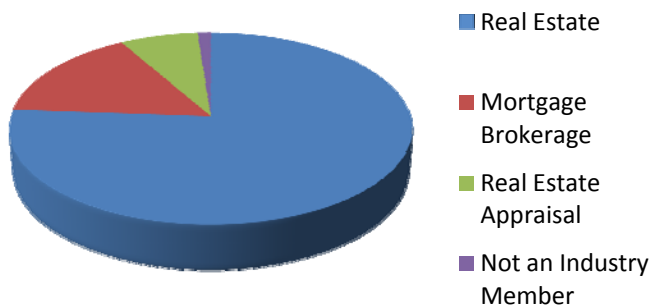
Communicating Through Social Media

The Real Estate Council of Alberta (RECA) is currently developing policy and procedures for its communication strategy with industry members and other stakeholders using various social media options. RECA conducted a social media survey with industry members on the merits of communicating through such communication vehicles.

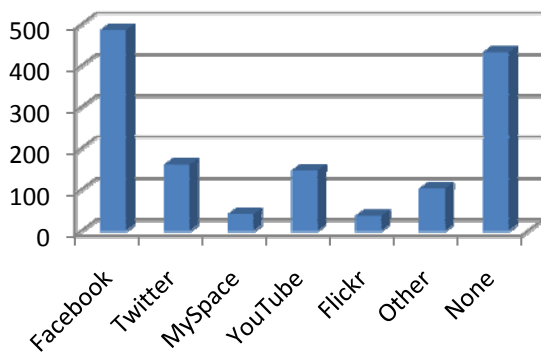
RECA would like to thank the almost 1,000 individual industry members who took the time to respond to the social media survey that was distributed in late December. The response to the survey was overwhelming and is a clear indication that industry members have very strong opinions about their usage of social media and about social media usage in the real estate, mortgage brokerage and real estate appraisal industries.

The various social media options that have exploded into our daily lives over the past few years are valid means of communication for those individuals that wish to use them for their social and business lives. Communication has evolved over time from verbal communication, smoke signals, pen and paper, telephone, fax, email and now many Internet options. Below is a brief snapshot of some of the survey data:

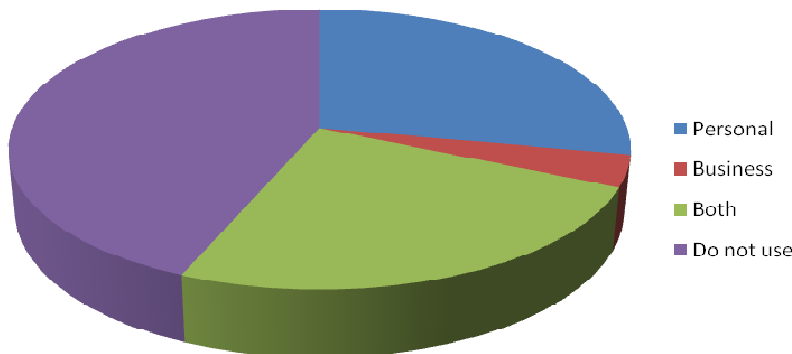
1. In what area of practice(s) are you authorized (check all that apply)?



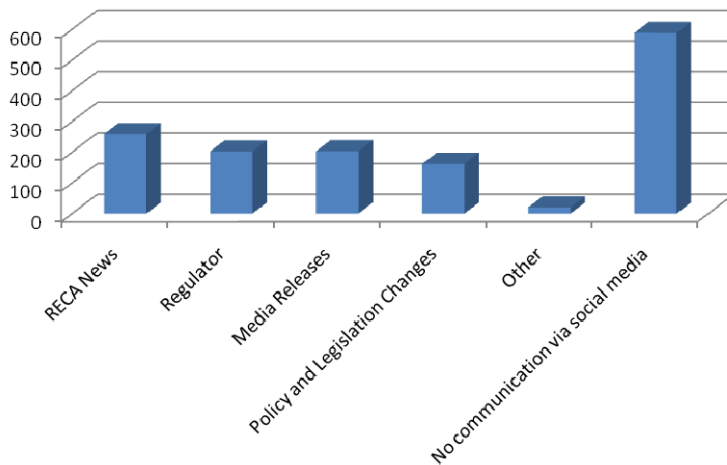
2. Do you use and/or have an account with the following social media options (check all that apply)?



1. For what purpose do you use social media options?



2. If you would like to communicate with RECA via social media, what information would you like to receive in this manner?



Communication with RECA through social media will be optional; industry members may choose to “follow” RECA for updates on news and other relevant information affecting industry members. The options that RECA is currently considering include Twitter, Facebook and YouTube. Stay tuned for further developments.

RECA Announces New Director of Industry Standards

Bob Myroniuk, executive director of the Real Estate Council of Alberta, is pleased to announce the appointment of Charles Stevenson as director of industry standards. Charles, who joined RECA on February 22, brings many years of experience in the real estate industry including being a broker and owner of his own brokerage. Charles' responsibilities include licensing, information services, standards of practice for all industry sectors as well as RECA communications. He has broad industry knowledge and is a welcome addition to the RECA management team.



Kirk Bacon, the current director of industry standards, has been appointed director of education and will focus more of his attention on the development and delivery of RECA's education programs while maintaining some of his current responsibilities. Education responsibilities were previously under the department of industry standards.

These changes have been necessitated by the retirement of Don Trites, RECA's current registrar, and RECA's ongoing focus to improve the delivery and effectiveness of its core services. We thank Don for his valuable contributions to RECA and wish him all the best in the future.

Licence Suspensions

Bradley Dwayne McInnes – Real Estate Appraiser Licence Suspended

On February 17, 2010, pursuant to section 38(i) of the *Real Estate Act* Rules, the executive director of the Real Estate Council of Alberta suspended the real estate appraisal licence of Bradley Dwayne McInnes. As a result of this suspension, Bradley Dwayne McInnes may not provide real estate appraisal services in Alberta at this time.

Joel David Helm – Real Estate Licence Suspended

On February 16, 2010, pursuant to section 53(1)(a) of the *Real Estate Act*, the Real Estate Council of Alberta temporarily suspended the authorization of Joel David Helm, former broker and associate broker registered with Helm Property Management & Realty Ltd. in Edmonton pending the outcome of conduct proceedings under Part 3 of the *Real Estate Act*.

It is alleged that contrary to the *Real Estate Act* and Rules made pursuant to the *Real Estate Act*, Mr. Helm failed to keep complete and accurate financial records; failed to deposit funds in a timely manner; disbursed money in a manner contrary to the terms governing the trust; failed to act honestly or in strict accordance with the *Real Estate Act*; failed to advise the executive director of a trust shortage and failed to fund the shortfall as soon as determined; made misleading representations; and, engaged in conduct that brings the industry into disrepute.

As a result of this suspension, Mr. Helm cannot trade in real estate and cannot provide property management services in Alberta at this time. Mr. Helm's suspension does not affect the real estate trading and property management activities of Helm Property Management & Realty Ltd.

Jonathan James Murphy – Mortgage Associate Licence Suspended

On February 10, 2010, pursuant to section 38(i) of the *Real Estate Act* Rules, the executive director of the Real Estate Council of Alberta suspended the licence of Jonathan James Murphy, mortgage associate registered with Mortgage Architects Inc. o/a Mortgage Architects in Calgary, Alberta. As a result of this suspension, Jonathan James Murphy may not deal in mortgages in Alberta at this time.

The licence of Mortgage Architects Inc. o/a Mortgage Architects is not affected by this suspension.

Ashley Amanda Barker – Mortgage Associate Licence Suspended

On February 10, 2010, pursuant to section 38(i) of the *Real Estate Act* Rules, the executive director of the Real Estate Council of Alberta suspended the licence of Ashley Amanda Barker, mortgage associate registered with Mortgage Architects Inc. o/a Mortgage Architects in Calgary, Alberta. As a result of this suspension, Ashley Amanda Barker may not deal in mortgages in Alberta at this time.

The licence of Mortgage Architects Inc. o/a Mortgage Architects is not affected by this suspension.

Amanjot (“Amy”) Kaur Brar - Real Estate and Mortgage Broker Licences Suspended

On January 27, 2010, as a result of information received, pursuant to s.38(a)(b) and (h) of the *Real Estate Act* Rules, the Real Estate Council of Alberta suspended the licences of Amanjot (“Amy”) Kaur Brar as a real estate broker and as a mortgage broker.

The Real Estate Council of Alberta has also suspended the licences of the brokerages of which Amanjot (“Amy”) Brar was the broker: 1386982 Alberta Inc. o/a Re/Max City View, a real estate brokerage, and 1410687 Alberta Inc. o/a Dominion Lending Centres – Financial Wellness, a mortgage brokerage.

As a result of these suspensions, the brokerages and Amanjot (“Amy”) Kaur Brar cannot trade in real estate or deal in mortgages in Alberta at this time.

Rajbrinder Singh Brar – Mortgage Associate Licence Suspended

On January 26, 2010, as a result of information received, pursuant to s.38 of the *Real Estate Act* Rules, the Real Estate Council of Alberta suspended the licence of Rajbrinder Singh Brar, formerly registered as a mortgage associate. As a result of this suspension, Rajbrinder Singh Brar cannot deal in mortgages in Alberta at this time.

Chris Michael Finn – Real Estate Associate Authorization Prohibition

On January 19, 2010, by way of a consent agreement, Chris Michael Finn was prohibited from industry member authorization by the Real Estate Council of Alberta (RECA) for eight months. Mr. Finn was also ordered to pay a fine in the amount of \$25,000 and costs in the amount of \$2,000, to complete an educational requirement and once authorized, to comply with supervisory conditions for a period of 24 months.

Mr. Finn has not been registered to trade in real estate since September 27, 2007.

Mr. Finn acted contrary to the *Real Estate Act* Rules and Code of Conduct (as it then was) by:

- Participating in fraudulent or unlawful activities in connection with real estate [s.7(c) of the Code of Conduct];
- Failing to act fairly, honestly and with integrity when dealing with non-clients [s.7(b) of the Code of Conduct]; and,
- Participating in the creation of a contract, document or form of communication that he knew to be false or misleading [s.4(d) of the Code of Conduct].

Rhonda Dianne Shebib - Real Estate Broker Licence Suspended

On December 15, 2009, pursuant to section 38(h) of the *Real Estate Act* Rules made pursuant to the *Real Estate Act*, the executive director of the Real Estate Council of Alberta suspended the authorization of Rhonda Dianne Shebib, broker, and further suspended the licence of the brokerage 1156377 Alberta Ltd. o/a Realty Executives North (formerly operating as Maxwell Realty Fort McMurray) in Fort McMurray, Alberta.

Note: On December 18, 2009, the Real Estate Council of Alberta reinstated the licence of Rhonda Dianne Shebib, real estate broker, and the licence of the brokerage 1156377 Alberta Ltd. o/a Realty Executives North (formerly operating as Maxwell Realty Fort McMurray) in Fort McMurray, Alberta. This licence reinstatement is the result of Realty Executives North having provided its fiscal year-end report as required pursuant to section 90 of the *Real Estate Act* Rules.

Case Summaries

Letters of Reprimand

October 2009 – January 2010

Eleven Letters of Reprimand, some with multiple contraventions, were issued:

- 2 breaches of failing to notify, in writing, the executive director when the industry member is disciplined by any real estate board, real estate association, mortgage broker association, appraiser association, or any professional, occupational or regulatory body [s.40(1)(d) of the *Real Estate Act* Rules]
- 1 breach of failing to act honestly [s.41(a) of the *Real Estate Act* Rules]

- 1 breach of failing to provide competent service [s.41(b) of the *Real Estate Act Rules*]
- 1 breach of failing to fulfill fiduciary duty [s.41(d) of the *Real Estate Act Rules*]
- 3 breaches of making representations or carrying on conduct that is reckless or intentional and that misleads or deceives any person or is likely to do so [s.42(a) of the *Real Estate Act Rules*]
- 1 breach of failing to keep the broker informed of the activities performed by an associate broker or associate on behalf of the brokerage [s.53 of the *Real Estate Act Rules*]
- 1 breach of advertising directly or indirectly or communicating or offering to any person an incentive except that which is provided by and on behalf of the brokerage with which he is registered [s.54(1) of the *Real Estate Act Rules*]
- 1 breach of failing to enter into a written service agreement with lender clients [s.73(1) of the *Real Estate Act Rules*]
- 1 breach of failing to ensure that the lender in a deal in mortgages complied with the written disclosure requirements to be provided to the borrower pursuant to the Fair Trading Act [s.73(4) of the *Real Estate Act Rules*]
- 1 breach of engaging in conduct that undermines public confidence in the industry, harms the integrity of the industry, or brings the industry into disrepute [s.42(g) of the *Real Estate Act Rules*]
- 1 breach of advertising or in any way holding him/herself out as a mortgage broker, real estate broker or real estate appraiser [s.17(d) of the *Real Estate Act*]
- 1 breach of failing to disburse money received or held in trust in respect of a dealing or trade in the business of the industry member only in accordance with the rules and with the terms of the trust governing the use of that money [s.25(1) of the *Real Estate Act*]

Audit Administrative Penalties

September 2009 – December 2009

Simco Management (Edmonton) Inc

The brokerage failed to submit to the Real Estate Council of Alberta the required accounting documents not later than three months after the end of the brokerage's fiscal year. Breach of s.91(4) of the *Real Estate Act Rules*.

\$1,500

Roncal Inc

The brokerage failed to submit to the Real Estate Council of Alberta the required accounting documents not later than three months after the end of the brokerage's fiscal year. Breach of s.92(1) of the *Real Estate Act Rules*.

\$1,500

953372 Alberta Ltd o/a Realtyl Group

The brokerage failed to submit to the Real Estate Council of Alberta the required accounting documents not later than three months after the end of the brokerage's fiscal year. Breach of s.91(4) of the *Real Estate Act Rules*.

\$1,500

Residential Remedies Inc o/a Exit Realty Fort McMurray

The brokerage failed to submit to the Real Estate Council of Alberta the required accounting documents not later than three months after the end of the brokerage's fiscal year. Breach of s.91(4) of the *Real Estate Act* Rules.

\$1,500

Administrative Penalties

November 2009 – December 2009

BRIAN LEHMAN EVALUATIONS INC.

- Traded in real estate without the proper authorization [s.17(a) and s.17(d) of the *Real Estate Act*]
- Brian Lehman Evaluations Inc. (BLE) recommended and provided its services to the public through its principle D.R., who is not presently, and never has been authorized to trade in real estate. The trade activities performed by BLE or on behalf of BLE included but were not limited to the following:
 - Making representations regarding their ability to sell real estate
 - Providing advice and direction to sellers of real estate recommending their assistance in marketing and sale of real estate
 - Soliciting, negotiating or obtaining a contract to sell property on behalf of the owners
 - Holding itself out to being authorized to trade by advertising, creating and disseminating promotional materials to the public
- D. R., on behalf of BLE, performed trade activities which included but were not limited to the following:
 - Showing properties to prospective purchasers
 - Assisting or offering to assist potential purchasers with the completion of formal offers to purchase
 - Assisting in the determination of the asking price on some properties
 - Soliciting or attempting to solicit offers to purchase from prospective buyers
- \$4,000 Administrative Penalty

CARL BRETZLAFF, ASSOCIATE - RE/MAX REAL ESTATE EDMONTON LTD.

- Failed to notify his broker of an associate's contravention of the *Real Estate Act* Rules [s.53(h) of the *Real Estate Act* Rules]
- Mr. Bretzlaff became the Branch Delegate for Re/Max Real Estate Edmonton in 2003 and was the Branch Delegate from March 11, 2007 to March 16, 2007. During this time a real estate associate who was registered with Exit Realty Results completed the necessary forms to register with Re/Max Real Estate Edmonton. During this same period, the associate traded in real estate on behalf of Re/Max Real Estate Edmonton even though he did not become registered with Re/Max Real Estate Edmonton until March 16, 2007. Mr. Bretzlaff was aware that the associate was not yet registered with Re/Max Real Estate Edmonton and instructed the

associate not to trade on behalf of Re/Max Real Estate Edmonton until his registration was transferred. Mr. Bretzlaff failed to notify the broker of the associate's contravention of s.54(1)(a) of the Rules. It was Mr. Bretzlaff's responsibility as an associate licensed under the Act and as a Branch Delegate to ensure the associate was in compliance with the *Real Estate Act* and Rules.

- \$1,000 Administrative Penalty

Consent Agreements

November 2009 – January 2010

MING SIMON ZHOU (SIMON JOE), REAL ESTATE BROKER - BUYERSAVE2 REALTY INC.

Issues:

- Failed to disburse trust monies in accordance with the terms of trust agreed to by both parties [s.25(1)(d) of the *Real Estate Act*]
- Engaged in conduct that undermines the industry and brings the integrity of the industry into disrepute [s.41(g) of the *Real Estate Act Rules*]

Facts:

- The terms of the trust set out in the Real Estate Purchase Contract (REPC) provided that the initial deposit was to be returned to the buyer in the event that the buyer did not remove conditions
- Mr. Joe was aware that the buyer requested, on more than one occasion, that the condition removal date for her financing condition be extended and he denied these requests on his clients' behalf. He was aware as well that the buyer was working out of town, which was why she asked for the condition removal date to be extended.
- The buyer did not receive mortgage financing approval by the condition removal date and as a result, she did not remove her financing condition.
- After being advised that the buyer did not receive financing approval by the condition removal date and that she wanted her deposit returned, Mr. Joe's clients were willing to extend the condition removal date.
- The buyer no longer wished to continue with the purchase and requested a return of her initial deposit.
- Mr. Joe felt the buyer was not using reasonable efforts to satisfy her financing condition in part because she was not prepared to continue with the purchase when his clients were prepared to. Mr. Joe paid the deposit monies into a lawyer's trust account, which resulted in the buyer's only recourse being to seek a return of her deposit money by suing in court.
- There was no evidence that the buyer did not use her best efforts to satisfy her conditions, especially given the fact she asked for extensions to the condition removal date. As such, there was no dispute as to entitlement to the deposit. The condition was a buyer's condition, for the sole benefit of the buyer, and she did not remove her condition. The initial deposit monies should have been paid to the buyer forthwith, as per the trust conditions set out in the REPC.

Results: By way of a Consent Agreement, which was ratified by a RECA Hearing Panel, Simon Joe was ordered to pay a fine of \$2,500 and costs of \$250, and must complete an educational requirement.

**MARIAN BARRY, BROKER
883813 ALBERTA LTD. O/A ROYAL LEPAGE TRUE NORTH REALTY**

Issues:

- Failed to ensure the business of the brokerage was carried out competently and in accordance with the Act, Regulations, Rules and Bylaws [s.51(1)(d) of the *Real Estate Act* Rules]

Facts:

- Ms Barry employed an individual to trade in real estate who was not authorized to trade in real estate and who failed to meet the requirements of the Act, Regulations, Rules and Bylaws
- Ms Barry paid a commission to an individual in connection with a trade in real estate while that individual was not authorized to trade in real estate

Results: By way of a Consent Agreement, which was ratified by a RECA Hearing Panel, Ms Barry was ordered to pay a fine of \$2,000 and costs of \$500, and must complete an educational requirement.

**JILL KERRIGAN, FORMER REAL ESTATE ASSOCIATE NOW REAL ESTATE ASSOCIATE
BROKER - 883813 ALBERTA LTD. O/A ROYAL LEPAGE TRUE NORTH REALTY**

Issues:

- Participated in the creation of a document that she knew or ought to have known was false or misleading [s.4(d) of the Code of Conduct, as it was then]

Facts:

- D.V contacted Royal LePage True North Realty (RLTNR) to discuss registering as an associate in or around September 2006
- The broker recommended that D.V. wait to become registered as an associate with RLTNR until licence renewal time, October, 2006, to avoid paying licensing fees twice.
- Ms Kerrigan met with D.V. in September of 2006 and prepared or assisted in preparing numerous forms for D.V. for the purpose of registering D.V. with various associations, boards and RLTNR. These forms represented that D.V. was authorized to trade in real estate as an associate when he was not authorized to trade.

Results: By way of a Consent Agreement, which was ratified by a Hearing Panel, Ms Kerrigan was ordered to pay a fine of \$2,000 and costs of \$500, and must complete an educational

requirement. Ms Barry paid a commission to an individual in connection with a trade in real estate while that individual was not authorized to trade in real estate

**MARLENE PAHL, REAL ESTATE ASSOCIATE
NORALTA REAL ESTATE INC. O/A ROYAL LEPAGE NORALTA REAL ESTATE**

Issues:

- Failed to use her best efforts to ensure her role as an industry member in a real estate transaction was clearly understood [s.3(a) of the Code of Conduct, as it was then]
- Participated in the creation of a document, or form of communication that she knew or ought to have known was false or misleading [s.4(d) of the Code of Conduct, as it was then]
- Participated in the creation of a document or contract that she knew or ought to have known was not legally binding, confusing or did not reflect agreements already in place [s.6(c) of the Code of Conduct, as it was then]

Facts:

- Ms Pahl acted as a dual agent in a real estate transaction between Ms M. and Mr. and Mrs. H. Mr. H was working out of town and not able to sign any documents.
- Ms Pahl observed and allowed Mrs. H. to sign her husband's signature on several documents relating to the transaction including the Offer To Purchase/Real Estate Purchase Contract and an Informed Dual Agency Consent form.
- As a result, it appeared that Mr. H. had signed the documents himself and was consenting to being represented by Ms. Pahl in a dual agency capacity when in fact he had not signed the documents and Ms. Pahl had not obtained Mr. H's informed consent to dual agency representation.

Results: By way of a Consent Agreement, which was ratified by a Hearing Panel, Ms Pahl was ordered to pay a fine of \$4,500 and costs of \$500, and must complete an educational requirement.

**TASNIM AHMED, REAL ESTATE ASSOCIATE
CALGARY INDEPENDENT REALTY LTD. O/A CIR REALTY**

Issues:

- Failed to act in the client's best interests [s.2(a) of the Code of Conduct, as it was then]
- Failed to ensure the clients were not taken advantage of and that the transaction was fair in every respect and give the clients a reasonable opportunity to obtain independent advice [s.2(m) of the Code of Conduct, as it was then]
- Made a representation that misleads or deceives a person or is likely to do so [s.4(d) of the Code of Conduct, as it was then]

- Failed to provide competent service [s.6(a) of the Code of Conduct, as it was then]
- Created a contract that the member knew or ought to have known is confusing [s.6(c) of the Code of Conduct, as it was then]
- Failed to act lawfully [s.7(c) of the Code of Conduct, as it was then]
- Failed to disburse money held in trust in accordance with the rules and with the terms of the trust governing the use of that money [s.25(1)(d) of the *Real Estate Act*]
- Failed to ensure that the terms of the trust governing the money are in writing [s.25(2) of the *Real Estate Act*]
- Failed to provide a trade record required to his broker [s.23(e) of the *Real Estate Act* Rules, as it was then]
- Failed to keep his broker informed of the activities he was performing on behalf of the brokerage [s.23(f) of the *Real Estate Act* Rules, as it was then]
- Failed to notify the executive director of a bankruptcy [s.25(3)(d) of the *Real Estate Act* Rules, as it was then]

Facts:

- From May 2000 to March 2003, Mr. Ahmed was agent for the seller of a rural store with inventory.
- The store was financed by several small business loans.
- In January 2003, an interested buyer was found. Mr. Ahmed entered into dual agency with the Cs, the buyers, for the purchase of the business. He also became listing agent for sale of the C's current property.
- Mr. Ahmed drafted one agreement for the sale of the business, which required the Cs to assume the business loans. The loans could not be assumed so that agreement was terminated.
- Mr. Ahmed then drafted a second agreement for transfer of the business but that agreement failed to address the sale of the C's home in Calgary, and failed to resolve issues about the business's inventory.
- In March 2003, Mr. Ahmed terminated the listing of the C's home and presented the C's with a personal offer to buy their home. This purchase agreement required the removal of a caveat on the property. The price included a "deposit" of "commission" which was inaccurate and inappropriate.
- Mr. Ahmed did not pay the purchase price and took possession of the C's home as tenant without a tenancy agreement.
- A dispute arose over the inventory of the business and the purchase of the business failed. The Cs then had to obtain an order to remove Mr. Ahmed from their property in Calgary.

Results: By way of a Consent Agreement, which was ratified by a Hearing Panel, Mr. Ahmed was order to pay a fine of \$11,100 and costs of \$1,500, and must complete Phase 2 of the Real Estate Associates' Program.

CHRISTINA HAGERTY, REAL ESTATE ASSOCIATE

FORMERLY REGISTERED WITH TWIN OAKES REAL ESTATE 1993 O/A RE/MAX HOUSE OF REAL ESTATE AND CURRENT REGISTERED WITH BGB REALTY INC. O/A RE/MAX REALTY PROFESSIONALS

Issue:

- Failed to inform her client what the fees for providing services would be and did not get an agreement, in writing, to provide the services [s. 5(a) of the Code of Conduct, as it was then]

Facts:

- Ms Hagerty evaluated the house of clients N.K. and D.G. and found that it needed some work, including painting.
- One of the owners, N.K., indicated that she could not afford painting at that time.
- Ms Hagerty told N.K. that she had a painter and would get it painted.
- Ms Hagerty felt that she would be able to get the cost of the painting from the final commission.
- There was no agreement in writing regarding payment of the painting costs. The property was painted.
- The parties discussed terminating the listing agreement as they were in dispute as to how to appropriately market and sell the property.
- Ms Hagerty sent a termination agreement to the owners and when they did not agree, she unilaterally terminated the listing.
- Ms Hagerty invoiced the owners for the painting and the marketing of their property. When they did not pay, a caveat was placed on the property on behalf of Ms Hagerty's brokerage. The caveat was for expenses and commissions on the unclosed sale. A settlement was reached on the matter. However, a complaint was filed with RECA.

Results: By way of a Consent Agreement, which was ratified by a Hearing Panel, Ms Hagerty was ordered to pay a fine of \$2,500 and costs of \$500, and must complete an educational requirement.

Appeal of an Administrative Penalty

December 2009

ANDREW MACLEOD, THEN APPRAISER CANDIDATE AND CURRENTLY APPRAISER

Issues:

- Failed to hold proper authorization to act as a real estate appraiser [s.17(c) of the *Real Estate Act*]

Facts:

- Mr. Macleod was licensed as a candidate appraiser authorized to conduct appraisals from August 16, 2006 to September 30, 2007
- On or about August 15, 2007, Mr. Macleod used the RECA Online registration system to pay the fees required to complete his real estate appraiser/candidate licence application for the 2007/2008 licensing period.
- This was the first year that RECA had implemented the online registration system for appraisers and Mr. Macleod was unfamiliar with the process.
- On or about September 6, 2007, Mr. Macleod prepared a paper licence application for the 2007/2008 licensing period. Mr. Macleod signed this application and had it commissioned on this date.
- Mr. Macleod was under the impression that he was fully licensed and registered for the upcoming licensing period.
- On or about September 25, 2007, RECA sent out communication reminding appraisers and candidates to renew their licences using the RECA Online system.
- The communication provided the steps required to renew registration and it also stated that all appraisers and candidates were advised to check their licensing status on October 1, 2007, prior to providing real estate appraisal services.
- Mr. Macleod stated that he did not recall receiving this or any other correspondence from RECA.
- Mr. Macleod contacted RECA on November 5, 2007 to inform them he was not properly licensed.
- During the time Mr. Macleod was not licensed, he conducted four appraisals, the details of which he provided to RECA.
- RECA opened an investigation into whether Mr. Macleod had performed real estate appraisals while unauthorized.
- On July, 20, 2009, Mr. Macleod was issued an Administrative Penalty in the amount of \$4,000 with regard to his contravention of s.17(c) of the Act.
- On August 17, 2009, Mr. Macleod appealed the Administrative Penalty.

Result: A Hearing Panel accepted the Statement of Agreed Facts and ordered Mr. Macleod to pay an Administrative Penalty of \$500.

Appeal Panel Review

December 2009

Daren M. Broers

Facts: Following an information review, the executive director cancelled the mortgage broker licence granted to Mr. Daren Broers pursuant to section 38 of the *Real Estate Act* Rules (the Rules). Upon Mr. Broers' request, an Appeal Panel was convened pursuant to section 39 of the *Real Estate Act* Rules to review the executive director's decision.

Results: After a reviewing the written and oral submissions, the Appeal Panel upheld the executive director's decision to cancel Mr. Broers' licence and determined that while the sanction imposed was severe, it was reasonable in the circumstances.

This matter is currently the subject of a judicial review application to the Court of Queen's Bench.

Education Corner

To date, more than 1,246 real estate industry members have completed the Real Estate Update 2009-2010 course and another 388 are currently enrolled in the online version of the course. This total of 1,629 represents approximately 14 per cent of real estate industry members. To date 72 per cent of learners have elected to take the course online. Learners continue to give the course a 95 per cent approval rating.

The following questions and answers will help you learn more about taking the online course.

How long is the course?

The online course progresses at the pace of the individual industry member. Industry members who have completed the course report that it took on average, 4 to 4.5 hours to complete. The classroom version of the course is approximately 5.5 hours.

How much does the online course cost?

The cost of the online Real Estate Update 2009-2010 course has been included in the annual licensing fees. When accessing the course, you will not be required to pay any additional amounts. There will be additional fees from the approved education course providers for the classroom version of the course.

When I try to log-on, it says I need a RECA ID number. What is that?

All RECA online courses require your individual and unique RECA ID number to log on to the course. This number can be obtained from your broker. If you have difficulty logging on with your RECA ID number, contact RECA at info@reca.ca, or call 403-228-2954 (in Calgary), or toll-free at 1-888-425-2754.

What happens if I have to log-out before I have completed the course?

The course will remember where you were in the course when you logged off. When you return

to the course, the course will start off at that point. You may log in and out as many times as your schedule requires.

I'm currently enrolled in the course and I have a few questions. Where can I get answers?

Once you are enrolled in the online course, you can access helpful resources such as the Course Orientation and Course FAQs. If you have any other questions about the course, please contact RECA Education at

I completed the course, is there a way I can log back in to review some of the material?

Once you have completed the course, you can log back in and review any part(s) of the course. All RECA Re-licensing Education Program (REP) online courses are available free of charge to any learner that has previously completed the course.

What are the minimum system requirements for the online course?

Windows®

Processor: Intel® Pentium® II 450MHz, AMD Athlon™ 600MHz or faster processor (or equivalent)

RAM: 128MB of RAM

Flash Plugin: Flash Player 9 or higher

PDF Reader: Adobe Acrobat

Pointing Device: Mouse, tablet or trackball

Audio Output: Sound card and speakers or headphones

Screen resolution: 1024x768 or greater

Recommended browsers: Microsoft Internet Explorer 6.0 or later, Firefox 2.x, Firefox 3.x, AOL 9, Opera 9.5 or later, Safari 3.x, Chrome 2.0 or higher

Macintosh

Processor: PowerPC® G3 500MHz or faster processor

Intel Core™ Duo 1.33GHz or faster processor

RAM: 128MB of RAM

Flash Plugin: Flash Player 9 or higher

PDF Reader: Adobe Acrobat

Pointing Device: Mouse, tablet or trackball

Audio Output: Sound card and speakers or headphones

Screen resolution: 1024x768 or greater

Recommended browsers: Firefox 2.x, Firefox 3.x, AOL for Mac OS X, Opera 9.5, Safari 3.x.

Connection Speed: ADSL, Cable or Satellite

If you have any additional questions about the course or how to access it, please do not hesitate to contact RECA at education@reca.ca or (403)228-2954 or toll-free at 1-888-425-2754.

Legal Corner

The plaintiff, a licensed real estate brokerage, initiated proceedings against the defendant sellers for payment of commissions though there was no sale of the real estate in question. The brokerage sought payment of commissions on the basis that the sellers, with whom the brokerage had a listing agreement, refused to complete a sale of the subject property. The sale, which the listing agent (Mr. Z) had effected, was to be for the full list price.

The defendants took the position there was not a binding purchase contract because their conditions were not met. The buyers discharged the defendant sellers of any obligations they may have had under the purchase contract, but the plaintiff brokerage insists upon its commission.

Case Particulars

In April 2007, the defendants entered into a listing agreement with the plaintiff brokerage. The defendant sellers gave the brokerage the exclusive right to market their property for sale and agreed to pay the brokerage a commission if the property sold or if the defendant sellers signed a purchase contract with a buyer who is willing and able to complete the sale but the sellers refuse.

On May 13, 2007, the defendants entered into a purchase contract with buyers. The price offered and accepted was the full listing price and the contract was initially unconditional. Closing was to take place on August 15, 2007. Mr. Z was acting as dual agent for both parties.

It was an express term of the contract that the defendant sellers were responsible for terminating all residential leases or rental arrangements within the subject property prior to closing, therefore providing the buyers with vacant possession on the closing date.

On May 14, 2007, the buyers sought to add a home inspection condition to the purchase contract. The defendant sellers agreed, but also asked to include a condition of their own. They asked that the closing date be pushed back a week and they wanted, as a condition of the purchase contract, to indicate that they had until May 23, 2007 to terminate lease agreements or arrangements with their tenants and/or occupants, essentially making compliance with that covenant a condition of the sale and for the sole benefit of the sellers. All parties agreed to the changes and the purchase contract was formally amended.

The buyers carried out a property inspection on May 16, 2007 and waived their home inspection condition. One of the defendants, seller 1, executed a waiver of the sellers' condition immediately following the buyer's condition removal. Seller 1 provided the waiver to Mr. Z with instructions to take the waiver to seller 2 for signature.

During the court proceedings, testimony about what happened next was in dispute. Seller 1 testified that he asked Mr. Z to hold onto the executed waiver until receiving further instructions to release it to the buyers. Mr. Z vehemently denied being given any instructions other than to secure the second seller's signature. Seller 2 signed the waiver on May 17, 2007 and on May

18, 2007, Mr. Z dropped the waiver off at the buyers' residence.

On May 22, 2007, seller 1 emailed Mr. Z with instructions not to waive the defendant seller's condition, but Mr. Z had already delivered the waiver of conditions to the buyers.

On May 24, 2007, seller 1 emailed Mr. Z and attached termination notices that were provided to the tenants in order to meet the August 23, 2007 closing date. Seller 1 requested that Mr. Z pass the notices on to the buyers. During testimony, seller 1 indicated that the wording of the termination notices was intended only to pressure tenants into vacating the premises.

By the end of May 24, 2007, the defendant sellers had been made aware by tenants they were not going to be able to terminate any of the residential tenancy agreements that were in place with occupants of the subject property, so they withdrew their termination notices.

On May 25, 2007, seller 1 emailed Mr. Z and accused him of not following instructions and taking the position that the purchase contract died when the sellers' condition was not met by May 23, 2007 (i.e. seller 1 held the position that he did not authorize Mr. Z to release the waiver of conditions to the buyers).

In a further letter sent to the buyer, the sellers made it clear that they were refusing to complete the sale in accordance with the terms of the purchase contract. The buyers had no interest in purchasing the subject property with tenants in it and proposed a mutual release terminating the purchase contract. All parties agreed.

On June 8, 2007, the plaintiff brokerage terminated the listing agreement in accordance with Clause 15.2 of the agreement, which indicated that if a party to the agreement materially breaches part of the agreement, the other party may end the agreement with notice to the other party in writing.

Court Findings

The plaintiff brokerage argued that the defendants failed to provide the brokerage with all information necessary to list and market the property, and the defendants failed to immediately advise the plaintiff brokerage of any material change in the status of the property or in the information provided by the defendants.

At the beginning of the listing agreement, the defendants indicated that existing lease arrangements would not get in the way of providing vacant possession to potential buyers. However, within days of entering into the listing agreement, the defendants entered into new, lengthy, fixed-term leasing agreements with three sets of tenants without advising the listing brokerage.

The judge found that the breach in question entitled the brokerage to terminate the listing agreement, but that if commission was earned prior to the agreement's termination, the

brokerage's action in Court could be maintained.

From previous case law, the judge in this matter inferred some general principles with respect to a brokerage's entitlement to commissions:

- The listing or commission agreement must provide for a commission even though there has been no sale and such provision(s) must be clear;
- The event that triggers commission must have taken place, which often means there must have been a binding purchase agreement and a prospective buyer ready, willing and able to complete the sale;
- Essential terms of the aborted purchase contract must agree with the terms of the listing agreement or have been agreed to by the seller(s); and,
- The listing brokerage (agent) must show that it was not through his fault or that of the buyer that the sale was not completed.

The purchase contract in question included a provision for commission even though no sale had been completed, and the provision was brought to the attention of the defendant sellers (who themselves were licensed real estate industry members familiar with commission clauses).

The judge took the position that there was a binding, unconditional purchase contract. The absence of anything in writing imposing a condition on the delivery of the seller's condition waiver weighed heavily in the judge's support of Mr. Z's version of events. Additionally, several hours after receiving the signed waiver of conditions from seller 1, Mr. Z emailed the buyers and seller 1 to advise that he would be forwarding the waiver to the buyers as soon as seller 2 signed. Seller 1 provided no objection to the proposed course of action.

The purchase agreement accorded with the listing agreement as it required the buyers to pay the full list price for the property. The buyers were ready, willing and able to complete the sale agreement they signed. Their sale agreement was for vacant possession and they were ready to proceed provided there was vacant possession.

The judge did voice concerns about the conduct of Mr. Z in that he did not properly understand his duties to his seller clients. When the sellers discovered they were not going to be able to comply with the vacant possession condition, they asked Mr. Z to retrieve or rescind the waiver of conditions. Mr. Z refused, citing a fiduciary duty to the buyers.

As Mr. Z was acting as a dual agent for the sellers and the buyers, for him to refuse to carry out the lawful instructions of the sellers was a breach of his fiduciary duty to the sellers. It did not matter that the seller's instructions were given after the waiver of conditions had been given to the buyers. Though it may have been too late to rescind or the purported rescission may have had no effect, it was not Mr. Z's call. His obligation was to communicate to the buyers what was communicated to him by the sellers. In the end, the sellers wrote their prospective buyers directly explaining the predicament in which they found themselves.

The law is clear that sellers of real estate are entitled a listing agent's best skill, care and

diligence in performing his tasks. Such a relationship is one of the traditional principal/agent relationships, which give rise to fiduciary duties.

However, a distinction must be drawn between a situation where the breach of fiduciary duty is dishonest and one which is not. If the listing agent acts dishonestly or is found to be motivated by his own best interests, rather than those of his client(s), he may be deprived of his commission. But a listing agent whose actions are the result of an honest but mistaken notion of his duties to his clients may still be entitled to a commission.

The case at bar was an example of the latter. Mr. Z should not have refused to communicate the sellers' rescission to the buyers. But the judge found no evidence that his refusal was driven by his own self-interest. Rather, Mr. Z continued to work to get the purchasers to take the house subject to one or more of the residential tenancies. When that proved impossible, Mr. Z assisted the parties in executing a Mutual General Release. Helping the parties with the Mutual General Release did not advance his interests, but it is what his clients wanted and he assisted them in that regard.

Not carrying out the seller's instructions to communicate their rescission of the condition waiver to the buyers did not cause the sellers any loss or damage. The buyers by then were already in a position to demand specific performance. The brokerage's action for commission was not affected by Mr. Z's refusal to communicate the purported rescission.

The judge concluded that Mr. Z's breach was not dishonest or motivated by self-interest. Nor did his breach harm the sellers. It was therefore not a breach which disentitles the brokerage to its commission.

The judge found in favour of the plaintiff brokerage for its commission.

If you are interested in the case reference, please contact RECA communications at: communications@reca.ca.

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