

REAL ESTATE COUNCIL OF ALBERTA

NOTICE OF ADMINISTRATIVE PENALTY

To: Michael Holmes, real estate broker
c/o Larlyn Property Management Limited
5925 – 12th Street SE, Suite 212
Calgary, Alberta T2H 2M3

And to: Larlyn Property Management Limited
5925 – 12th Street SE, Suite 212
Calgary, Alberta T2H 2M3

In accordance with s. 39 and s. 83 and the Bylaws of the *Real Estate Act*, R.S.A. 2000 c. R-5 (the “Act”), the Executive Director of the Real Estate Council of Alberta has determined that there is sufficient evidence of conduct deserving of sanction in regard to Michael Holmes, at all relevant times, Real Estate Broker, registered with Larlyn Property Management Limited and Larlyn Property Management Limited (hereafter “Larlyn”). The Executive Director has determined that they have jointly and severally contravened sections 41(d) and 57(d) of the Rules made pursuant to the Act and hereby assesses an Administrative Penalty jointly and severally. The evidence giving rise to the Executive Director’s decision is as follows:

Larry Martin and Ray Parsons were involved in a shared vacancy program agreement (a rental pool) on a property located at 5217 – 39 Street, Red Deer referred to as “Royal Oaks”. The Royal Oaks shared vacancy program was managed by Larlyn under a Shared Vacancy Program Management Agreement dated on September 1, 2004. One of Larlyn’s obligations was to deposit into the owner’s account, the participants owners revenues, less expenses, not later than the 27th of each month. Larlyn also held in trust residential tenancy security deposits in relation to premises owned by Messieurs Martin and Parsens.

Mr. Martin decided to leave the rental pool and gave notice to Larlyn on August 1, 2008, to become effective August 30th, 2008. At the time of termination Mr. Martin asked Larlyn to return the residential tenancy security deposit to the tenant. After termination on September 1, 2008, the deposit was not returned to Mr. Martin’s tenant until November 7, 2008. Larlyn states there were various reasons for this delay including an accounting error where the rent paid by Mr. Martin’s tenant was credited to the rental pool and not the tenant’s specific unit. In order for the deposit to be returned the tenant was required to produce proof of rental payments to Larlyn.

Mr. Parsons decided to exit the rental pool on March 22, 2009 to become effective on April 1, 2009. On June 23, 2009 Mr. Parsens submitted a letter to Larlyn requesting the security deposit and any accrued interest. Mr. Parsons' termination was processed in Larlyn's system on August 18, 2009. On September 18, 2009 Mr. Parsens spoke with a representative at Larlyn regarding the deposit and was advised they would get back to him; he did not receive a phone call. On October 27, 2009 Mr. Parsens left a message for the same individual to call him back regarding the deposit. On November 4, 2009 Mr. Parsens spoke with the same individual and he was informed she would make it a priority. On January 7, 2010, as no deposit was received, Mr. Parsens spoke with the same individual who informed him she did not have the authority to "move money out of the system" he was then transferred to Debbie Wilson. Larlyn returned the security deposit to Mr. Parsons on January 13, 2010. Larlyn provided no explanation as to why there was a delay or hold up for Mr. Parsens security deposit return.

The Executive Director is of the opinion that the above noted conduct is in contravention of section 41(d) and 57(d) of the Rules which sets out that:

- 41 Industry members must:
(d) fulfill their fiduciary obligations to their clients;
- 57 The basic obligations of an industry member who is in a sole agency relationship with a seller are:
(d) to obey all lawful instructions of the seller;

In accordance with s. 39 and s. 83 of the Act and Part 4 of the Bylaws, the Executive Director hereby assesses an Administrative Penalty in the amount of **\$2,000** against Michael Holmes and Larlyn Property Management Limited jointly and severally.

In determining the amounts outlined herein, the following aggravating and mitigating factors were considered:

Aggravating Factors:

- Failure to follow lawful instructions regarding returning trust funds; has a negative effect on public confidence and harms the integrity of the industry.
- Members of the public were inconvenienced by these events.
- There are two separate and distinct contraventions in respect to separate clients.
- There is a history of discipline for Michael Holmes

Mitigating Factors:

- All monies were eventually returned to the two members of the public.

Payment of this Administrative Penalty shall be accepted by the Executive Director as complete satisfaction of the amount of the penalty and no further proceedings under Part 6 of the *Act* will be taken against Michael Holmes and Larlyn Property Management Limited in respect of the contravention. A person who pays an Administrative Penalty may not be charged under the *Act* with an offense in respect of those contraventions.

This sum of **\$2,000.00** is payable to the Real Estate Council of Alberta within thirty (30) days of the date of issuance of this Notice of Administrative Penalty. If Michael Holmes and Larlyn Property Management Limited fail to pay the amount set out in this Notice, the Executive Director may commence legal action against Michael Holmes and Larlyn Property Management Limited to recover the amount owing in respect of the Administrative Penalty as a debt due to the Real Estate Council of Alberta.

If Michael Holmes and Larlyn Property Management Limited disputes this Notice of Administrative Penalty in accordance with s. 83.1 of the *Act*, Michael Holmes and Larlyn Property Management Limited may appeal it to a Hearing Panel. Michael Holmes and Larlyn Property Management Limited will be given a full opportunity consistent with procedural fairness and natural justice to present evidence before the Hearing Panel and make representations in relation to the contravention.

If Michael Holmes and Larlyn Property Management Limited have any questions in regard to this Notice of Administrative Penalty, please contact Tricia Hickey, Investigator, at the Real Estate Council of Alberta.

DATED this 11th day of February, 2011.

REAL ESTATE COUNCIL OF ALBERTA

Per: *Joseph Fernandez*, for
Bob Myroniuk
Executive Director