

THE REAL ESTATE COUNCIL OF ALBERTA

**IN THE MATTER OF Subsection 39(1)(b) and 41 of the Real Estate Act, R.S.A.
2000 c R- 5**

**AND IN THE MATTER OF a Hearing Regarding the Conduct of Edward Bainbridge
Broker, Registered with Bainbridge Mortgage Corporation previously o/a The
Mortgage Centre**

NOTICE OF HEARING

To: **Edward Bainbridge
1092 Acadia Drive SE
Calgary, Alberta
T2J 0E3**

TAKE NOTICE that, at a hearing which has been scheduled on January 9 and 10, 2003 at 9:30 a.m. at the offices of the Real Estate Council of Alberta located at Suite 340 2424 4 Street SW Calgary, Alberta T2S 2T4, you will be required to answer the following allegations:

1. That from late 1999 until mid 2000, 304 residential condominium mortgages were brokered through Bainbridge Mortgage Corporation o/a The Mortgage Centre ("Bainbridge Mortgage"). Edward Bainbridge was the Broker of Bainbridge Mortgage at all relevant times. The 304 mortgages were for units located in two condominium complexes located in the city of Edmonton, in the province of Alberta. The condominium units (the "Units") were located in two buildings know as Village on the Park ("V on P") and Greenwood Acres (GWA).
2. Jim Stewart was registered as a mortgage agent with Bainbridge Mortgage from 1998 to June 2001. Jim Stewart brokered 286 of 304 mortgages brokered through Bainbridge Mortgage. The mortgagors for the 286 mortgages were a group of Investors arranged by Jim Stewart. Edward Bainbridge brokered the balance. Of the eighteen mortgages brokered by Edward Bainbridge twelve of the mortgages were for Bainbridge personally and six were for a third party named KD. (all mortgagors collectively know as the "Investors") Concurrent with the placing of the mortgages the Investors purchased the Units. Stewart and Bainbridge drafted the mortgage applications. Jim Stewart's completed the mortgage applications for 286 of the Units and he indicated on the mortgage applications that the Investors were placing 30-35% of the purchase price for the Units from their own financing. Examples of comments on mortgage application completed by Jim Stewart are:

- (a) Investor PS and LS: "Client is purchasing revenue property with 35% down from his own resources"; (wording on 13 separate mortgage applications) and,
- (b) Investor DH and PL: "Clients are purchasing property with 35% from their own resources" (wording on 21 separate mortgage applications) and,
- (c) Investor EC:" He is purchasing this revenue property and will be putting 35% down", (wording on 2 separate mortgage applications) and,
- (d) Investor ML: "Client is purchasing revenue property with 35% down from his own resources"; (wording on 17 separate mortgage applications) and,
- (e) Investor RF: "Purchase of revenue property with 35% down from own resources" (wording on 8 separate mortgage applications) and,
- (f) Investor SO: "Client purchasing revenue property in Edmonton with 30% down from her own resources" (wording on 3 separate mortgage applications) and,
- (g) Investor AP: "Purchasing of revenue property with 35% down from own resources" (wording on 6 separate mortgage applications) and,
- (h) Investor CM: "She will be putting down 35% from her investment account" and for the same Investor "She will have 35% down from her own investment account", (wording on 8 separate mortgage applications) and,
- (i) Investor VK: "Client purchasing revenue property using 35% down from his own resources" or, "Purchasing this revenue property using 35% down from his own resources", (wording on 2 separate mortgage applications), and
- (j) Investor BB: "Client purchasing this revenue property. 35% down from own resources" (wording on 3 mortgage applications)

3. Each Investor purchased/mortgaged a multiple of Units. For example, Investor PS purchased/mortgaged 17 Units. Investor PS would have had to place approximately \$603,000.00 on the 17 Units he purchased to equal 35% down. Investor PS did not put any money down toward the Units. Investors DH and PL purchased/mortgaged 21 Units. Investors DH and PL did not put any money down toward the Units.
4. Edward Bainbridge drafted 18 of the mortgage applications. The mortgage applications drafted by Edward Bainbridge for his own personal mortgages indicate that he was to put 30-35% down [down payment] on the Units. By way of an example, two of Edward Bainbridge's own mortgage application state:

Unit 192 GWA

Sale Price	\$92,000.00
Mortgage amount	\$59,800.00
Down payment/equity	\$32,200.00

And

Unit 502 B V on P

Sale Price	\$106,000.00
Mortgage amount	\$68,900.00
Down payment/equity	\$37,100.00

The offer to purchase for 502B V on P signed by Edward Bainbridge indicates that he was placing a \$2,000.00 initial deposit on the property plus \$35,100.00 balance to close the transaction. Edward Bainbridge purchased and mortgaged 12 Units in the same manner. Notwithstanding Edward Bainbridge's mortgage applications and offers to purchase indicated he was placing 30-35% down on the Units, Edward Bainbridge by his own admission did not put any money down toward the Units.

5. Two mortgage applications were drafted for Investor KD. Four Units were set out in one mortgage application and two Units were set out in the other application. Particulars set out in the mortgage applications for two of the Units are as follows:

Unit 166 GWA

Purchase price	\$114,000.00
Mortgage amount	\$74,100.00
Down payment/equity	\$39,900.00

And

Unit 173 GWA

Purchase price	\$114,000.00
Mortgage amount	\$74,100.00
Down payment/equity	\$39,900.00

6. Mortgages from a variety of financial institutions were advanced on the above mortgage applications. Notwithstanding that the mortgage applications indicated, as set out in paragraph 2 subparagraphs (a) to (j), paragraphs 4 and 5 that 30-35% would be from the Investor's own resources or that the Investor had a 30-35% down payment, the Investors did not put any money down toward the Units purchased in either of the V on P or GWA.
7. Instead of putting money down from their own resources, the Investors signed a promissory note (participation promissory note, hereinafter known as a

"PPN"). The PPN was not disclosed to the financial institutions on the mortgage applications.

8. Concurrently with the buying of the Units and placing the mortgages the Investors signed a Buy-Back Option Agreement. The Buy-Back Option provided for the Investors to sell the Units back to the original seller of the Units. If the Investors took this option they would be paid \$3,000.00 per Unit.
9. Concurrently with the buying of the Units, placing of the mortgages and the signing of the Buy-Back Option Agreement, the Investors signed a Declaration of Trustee Agreement. The effect of Declaration of Trustee Agreement made the Investors bare trustees of the Units. Currently, the Units are still in the names of the above Investors; however, the Investors hold the Units in trust for another party.
10. This is conduct deserving of sanction, in that Edward Bainbridge:
 - (a) Failed to act fairly, honestly and with integrity when dealing with the various financial institutions by indicating on 18 mortgage applications that he and KD were putting 30-35% down on the Units when he knew that he and KD were not placing any money down on the Units. This failure to act fairly, honestly and with integrity to a third party is in breach of section 7 (b) of the Code of Conduct (the "Code") made pursuant to the Real Estate Act.
 - (b) Participated in the creation of false and misleading documents when he indicated on 18 mortgage applications that he and Investor KD were placing 30-35% down on the Units when he knew that he and KD were not placing any money down on the Units in breach of Section 4 (d) of the *Code*.
 - (c) Participated in the creation of a false and misleading document when he indicated on 12 offers to purchase that he was putting down 30-35% on the purchase of the Units, when he knew that he was not placing the 30-35% down on the Units, in breach of section 4 (d) of the *Code*.
 - (d) Participated in fraudulent or unlawful activities in connection with mortgage transactions when he completed 12 false mortgage applications and offers to purchase on his own behalf and provided this false applications and offers to the financial institutions in breach of section 7 (c) of the *Code*; and,
 - (e) Failed to adequately supervise Jim Stewart, agent with Bainbridge Mortgage, when Jim Stewart brokered 286 mortgages for the Units, in breach of section 21 (1) of the Rules made pursuant to the Real Estate Act. In the alternative, Edward Bainbridge was reckless in the supervision of Jim Stewart.

11. Edward Bainbridge pursuant to Rule 21 (2) of the Rules made pursuant to the Real Estate Act is accountable for the conduct of Jim Stewart. Edward Bainbridge had knowledge of Jim Stewart's misconduct, in that Jim Stewart brokered 286 mortgages for Investors and the mortgage documents drafted and sent by Jim Stewart were false and misleading, and Edward Bainbridge having knowledge of Jim Stewart's misconduct failed to take reasonable steps to prevent such misconduct; or in the alternative, Edward Bainbridge should have been aware of Jim Stewart's misconduct and Edward Bainbridge failed to take steps to deal with the misconduct.

AND FURTHER TAKE NOTICE that the Hearing Panel may make one or more of the orders outlined in section 43 of the Real Estate Act, including but not limited to an order for cancellation or suspension of any authorization issued to the industry member by the Council, a fine and costs.

AND FURTHER TAKE NOTICE that the following Hearing Panel members will hear the charges against you:

1. Lynn Patrick
2. Eric Stewart
3. Glen Chapman
4. Graham Downey (alternate)

If you have any objections to the composition of the Hearing Panel, you must notify the Real Estate Council of Alberta of your objections, together with the reasons for your objections within 14 days. If you fail to object to the composition of the panel within 14 days, the proposed panel will hear the charges against you.

AND FURTHER TAKE NOTICE that oral submissions shall be heard by the Hearing Panel. If you fail to attend the hearing, the Hearing Panel will hear the case and make a decision in your absence.

DATED at the City of Calgary, in the Province of Alberta, this 16th day of December 2002.

Real Estate Council of Alberta



Bob Myroniuk
Executive Director