

## Regulator – July 2009

### TRANSACTION BROKERAGE – PARTIES DO NOT AGREE

**Summary:** If either party declines to enter into a transaction brokerage agreement, the parties have a number of options to resolve the representational conflict. If the parties fail to reach an agreement, the brokerage must determine which party was a client of the brokerage first. The service agreements in place at the time of the conflict will assist the parties and the brokerage in determining which party was a client of the brokerage first and therefore will continue to be represented by the brokerage. The other party will have a choice to be represented by another brokerage or can opt for customer status (represent themselves). At all times, it is the client's decision as to how to resolve representational conflicts. [*Real Estate Act* s.1(1)(w.1); *Real Estate Act* Rules s.1(1)(g), s.41(d)(e)(f), s.43, s.59(3), s.59.1(3)]

If the situation arises where a brokerage represents a seller with whom it has an agency relationship and a buyer with whom it has an agency relationship is interested in the seller's property, in order to facilitate the purchase and sale of the property, the buyer and the seller and the brokerage may enter into a written transaction brokerage agreement. However, what happens if transaction brokerage is not agreed to by both parties?

If either party declines to enter into a transaction brokerage agreement, the parties have a number of options to choose from to resolve the representational conflict. The brokerage is guided by the *Real Estate Act* Rules and service agreements that have been entered into with the clients.

#### **Parties May Reach an Agreement on Representation**

The buyer and the seller may reach an agreement on their respective representations for the purpose of a particular transaction. They will need to decide which party will continue to be represented by the brokerage [*Real Estate Act* Rules s.59(3) and s.59.1(3)]. If they fail to agree, the brokerage has a number of options to offer the clients, as described below.

#### **Determine Which Party Was a Client of the Brokerage First**

The brokerage must determine which party was the first to become a client. In common law or designated agency, this is a question of fact and is a decision of the brokerage. If each party has a written service agreement, the date on the agreements will be the

determining factor. The client whose agreement pre-dates the other will remain a client of the brokerage.

If there is only one written service agreement, the broker may have difficulty determining when the other agency relationship began. Was it formed orally through conversations between the associate and the consumer or was it implied by the associate's conduct with the consumer (implied)? If there are no written service agreements for either party, the broker will have an even more difficult decision.

This situation points out another benefit of written service agreements with seller and buyer clients. Written service agreements set out the date the agreements were entered into and set out the options available to the parties should either client decline to enter into a transaction brokerage agreement.

### **Customer Status (Self-Representation)**

One option for the client who will no longer be represented by the brokerage is customer status or self-representation. The party that remains as a brokerage client will continue to have sole agency representation with the brokerage. The party that agrees to customer status will not and will represent themselves in the transaction.

The party that becomes a customer will need to sign a *Customer Status Acknowledgement* to confirm the change in representation with the brokerage. Although the brokerage will not represent that party or advocate on that party's behalf, the brokerage can provide customer services, which include real estate statistics, standard real estate forms, drafting offers and counter offers, and being kept informed on the progress of the transaction. In a designated agency brokerage, it would be the associate who provides these customer services.

### **Representation by Another Brokerage**

As a general rule, consumers are in a better position when they receive sole agency representation in their real estate transaction and are entitled to receive full agency representation, if that is their choice. If customer status is not acceptable, and the client wishes to be represented by another brokerage, the original brokerage should immediately recommend the party to another brokerage. Ultimately, it is up to the client to decide which brokerage will represent their interests in the transaction.

In a designated agency brokerage the brokerage can designate another associate in the same brokerage to represent the client in question for the purposes of the transaction in question.

### **What Happens if the Transaction Does Not Take Place?**

In either situation, if the client chooses customer status or chooses to be represented by another brokerage, and the transaction does not take place, the client will return to the first brokerage (in a common law brokerage) or to the designated agent in question (in a designated agency brokerage) in accordance with the terms of the service agreement. This is the case assuming the client has entered into a written service agreement in accordance with the language mandated for residential transactions. In a common law brokerage, if there is no such written service agreement, the client is not obligated to return to the same brokerage.

## Practice Tip

While transaction brokerage offers a solution to resolving the conflict of interest that occurs when a brokerage finds itself representing a seller and buyer in the same transaction, clients may prefer a different solution. The primary responsibility of the brokerage is to disclose the conflict of interest at the earliest practical opportunity and to ensure the client understands their choices. The implications of customer status (self-representation) versus agency representation by another brokerage should be fully explained.

The brokerage does not “turn the client into a customer,” as some would suggest. It is the client that must make the decision, based on their preferences and their needs. While the interests of consumers are best served by sole agency representation, some consumers will choose to represent themselves (customer status) for a variety of reasons. Industry members must respect that choice.

In some cases, a brokerage or industry member may determine that transaction brokerage may not be an appropriate solution for this type of conflict of interest. For more information on this topic, please see RECA Information Bulletin: *Transaction Brokerage – Not Always Appropriate*.

## Message from Council

Ralph Salomons, Chair

### Financial planning

Council will be reviewing the Real Estate Council of Alberta’s budget for the 2009-2010 fiscal year at its meeting on August 5. Financial planning for the coming year has been made slightly more difficult by a small, but expected drop, in licensing numbers, particularly in the real estate sector. Each year there is attrition of existing industry members; however, since 2001, the number of new industry members and those re-entering the industry has met or exceeded the number of industry members that have left the industry. The Alberta Real Estate Association has indicated to RECA that the Real Estate Associates’ Program (REAP) enrollment numbers have dropped compared to recent years and RECA expects that, as a result, there will be fewer new industry members coming into real estate in the year ahead and as a result a drop in revenue for RECA.

That said, there have been small increases in the number of mortgage brokers and real estate appraisers/candidates, and RECA remains confident that its history of strong financial planning and commitment to fiscal responsibility means Council’s financial position continues to be sound. Council is committed to long term solutions to ensure its ability to meet its mandate and provide services in an effective and efficient manner.

### Server upgrade

The upgrade of the RECA Online and website server was completed without a hitch in early July. The new server has increased security to protect RECA’s licensing information and increased capacity, which will allow more users to process applications faster, especially at renewal time.

Renewal information and new application forms will be released to brokerages and appraisers in mid-August, after Council has approved the budget.

### **Commercial real estate information sessions**

RECA was pleased to host two information sessions in June for commercial real estate brokers. Calgary and Edmonton commercial real estate brokers were invited to the sessions, which were held in both cities. The sessions were an excellent opportunity for commercial real estate brokers to meet with RECA staff and Council members for an update on RECA initiatives with respect to the commercial real estate industry.

The sessions also gave commercial real estate brokers an opportunity to provide input to RECA on the issues affecting the business of commercial real estate industry members. This input is a valuable resource for the work of RECA's Commercial Real Estate Advisory Committee. RECA strives to address the needs of all of the industry sectors it regulates, and appreciates the opportunity to receive input from each sector.

## **CASE STUDY: LICENCE CANCELLED FOR FALSE AFFIDAVIT**

A Real Estate Council of Alberta (RECA) Appeal Panel recently affirmed a decision of the executive director and the importance and requirement to swear a truthful affidavit when applying to become an industry member or when renewing your authorization.

The executive director cancelled the licence of a mortgage broker industry member because, subsequent to issuing an initial licence, the executive director received information that, in the executive director's opinion, established that the applicant provided false or misleading information as part of the application process. In addition, the industry member failed to cooperate and adequately respond to the executive director's inquiries. The former industry member requested a review of this decision by an Appeal Panel.

The concern of an Appeal Panel in its deliberations is that the process is fair, that the information upon which the allegations are made is true, and that the sanctions are justified. Ultimately, the Appeal Panel must be satisfied that the sanctions imposed by the executive director are fair and appropriate in the circumstances.

The evidence before the Appeal Panel in this particular case was not in dispute. In November 2008, an individual made application to become a licensed mortgage broker associate in Alberta. It was his actions in making application to become licensed and subsequent attempts to cover up his actions that gave rise to the executive director cancelling his licence.

Specifically, the individual in question answered "no" to the six suitability questions on the application form. The form states *"These questions apply to any and all situations and/or events preceding the date of this application. Please*

*read each of the following questions carefully and answer truthfully:*” Question #20 and #21 asks about commencement of proceedings or convictions for Criminal Code violations or other offences for which no pardon has been granted. Testimony of the former industry member during the appeal hearing established that he ought to have marked “yes” to Question #20 and Question #21.

In addition, the “Responsibilities” portion of the application form includes the provision that: *“...I will immediately notify the executive director in writing of any changes in the information provided to the executive director in support of this licence application that occurs during the application process or after the licence has been issued.”* The individual admitted that he either neglected to read these provisions, or read them and ignored them.

All RECA licensing and/or registration forms also include an “Affidavit” section. In this case, the now-former industry member admitting to signing the affidavit and solemnly swearing to have read and understood all questions and statements, and that all information on the application was true, as required by the affidavit, but he also indicated at the appeal hearing that he was not aware of what an affidavit was or its legal effect. The affidavit section also provides notification that: “Any affidavit containing false or misleading information may result in the refusal of the application or suspension or cancellation of any authorization issued thereupon.”

It is a best practice guideline for the broker and the person in front of whom the affidavit is sworn, to make inquiries of the applicant to ensure the information contained in the application is truthful and not false or misleading.

As part of the application process to become licensed as an industry member, the applicant was required to submit a Certified Criminal Record Check (CCRC) to RECA for review. He became licensed by RECA prior to RECA receiving his CCRC. In mid-April 2009, RECA’s registrar sent the individual a letter requesting that he provide a copy of his CCRC. This letter, as well as other communication from RECA, were ignored.

The individual in question received his CCRC from the Royal Canadian Mounted Police in early 2009, realized that his criminal record had not been expunged or pardoned, and delayed sending it to RECA until he was explicitly asked by RECA to do so – and even then, he resisted sending page two of the CCRC that gave the details of his criminal record. He admitted he waited for the deadline to deliver his CCRC to RECA because he did not take the process seriously enough and he testified he thought the sworn affidavit was a legal formality and did not understand why it was so important.

As stated earlier, the facts were not in dispute. As a professional person, the industry member ought to have known the importance of dealing honestly and directly with RECA as a governing body. If there was any doubt as to the veracity of his representations, he ought to have consulted with his broker and RECA. By swearing to false, misleading or questionable information on the RECA

application form, he demonstrated carelessness, or negligence, or willful blindness without regard to the consequences. The application form contained several clear warnings that should have alerted him to the importance of his actions.

As soon as the industry member became aware that he had a criminal record, there was no reason for him to maintain his earlier belief that his criminal record had been expunged. His obligation as a professional was to clarify his status with the governing bodies of the profession or professions of which he was a member. Delay in doing so indicates, at the very least, disregard for these professional bodies. The Appeal Panel is not able to conclude that he intentionally intended to deceive anyone. However, he clearly did not do enough to avoid a reasonable person from coming to that conclusion.

The Appeal Panel found that the executive director's decision to cancel the former industry member's licence was justified and therefore reasonable in the circumstances of the case.

This individual will be eligible to re-apply for his licence in 36 months as per s.14 of the *Real Estate Act* Rules.

This case illustrates how important it is that individuals take the application process seriously and ensure they complete the application form truthfully and swear a truthful affidavit. Swearing a false affidavit is a criminal offence and doing so can result in a licence cancellation.

Read the complete Appeal Panel decision on RECA's website under Complaints and Outcomes

## PROPERTY MANAGERS: REPORT TRUST ACCOUNT INFORMATION ONLINE

Section 32 of the *Real Estate Act* Rules requires that brokerages immediately notify the Real Estate Council of Alberta's (RECA) executive director of the opening or closing of trust accounts, or of any changes related to their trust accounts. Typically, brokerages provide immediate notification to the executive director of any trust account changes via fax, mail or email.

In the past, brokerages had no way to review the trust account information they had previously provided to RECA to ensure it was current and accurate, other than on their brokerage application form or other notification sent to the executive director. The tracking of trust account information that had previously been provided to RECA is especially cumbersome for brokerages that conduct property management activities on **behalf of others** (third parties) where there are multiple trust accounts for multiple owners and multiple properties for each owner.

Brokerages carrying out property management activities can view their trust account information for each client to ensure it is complete and accurate using RECA Online, and they can make changes themselves using RECA Online. Brokers will no longer have to fax, mail or email changes to RECA if they provide notification to the executive director of trust account changes using RECA Online.

All brokerages should immediately review information for all of their trust accounts using the RECA Online system to ensure the information is up to date, and make any changes as required.

To use RECA Online to review trust account information for all of your clients or to make changes to trust account information (including additions and deletions):

- Log on to RECA Online.
- At the brokerage details screen, select 'Modify Brokerage Trust Accounts' from the action bar next to the brokerage name.
- If you wish to modify the trust account information in any way, click on the pencil and paper 'Modify Trust Account' icon in the Action Box of the Trust Account screen to modify trust information.
- Click the garbage can icon to delete a trust account.
- Click the blank page icon above the trust information chart to add a new trust account.
- If the trust account information currently noted in RECA Online is correct, you do not need to do anything further.

RECA will automatically be notified anytime a brokerage uses RECA Online to make changes to trust account information.

## **UPDATE ON THE REGULATION OF SYNDICATED MORTGAGES**

Over the past year, the Real Estate Council of Alberta has worked extensively with the mortgage brokerage industry to develop a regulatory framework for licensed mortgage brokers who deal in syndicated mortgages. RECA wants to take this opportunity to thank all those brokerages and brokers that participated in these efforts, including the recent survey concerning syndicated mortgage activity in the province. Twenty-one brokerages responded to the survey, which covered the period from January 1, 2008 to December 31, 2008.

RECA's syndicated mortgage survey was prompted by a proposal of the Alberta Securities Commission (ASC) that the exemption for the registration and prospectus requirements of the ASC of RECA mortgage broker industry members of individuals dealing in syndicated mortgages in Alberta be removed. Currently, the ASC has an exemption from its registration and prospectus

requirements for those persons that are licensed with RECA as a mortgage broker and dealing in syndicated mortgages.

Notwithstanding efforts by RECA to seek an exemption for its industry members, the ASC has confirmed mortgage brokers licensed and regulated by RECA will also be subject to the regulatory requirements of the ASC with respect to syndicated mortgages effective September 29, 2009.

As a result of the decision of the ASC, Council will need to review its future role in the regulation of mortgage brokers who deal in syndicated mortgages. RECA will keep industry members informed of any changes that may occur in this regard.

RECA recommends any licensed mortgage broker who currently deals in syndicated mortgages, or who plans to deal in syndicated mortgages, familiarize themselves with the information posted on the Alberta Securities website at [www.albertasecurities.com](http://www.albertasecurities.com) with respect to National Instrument 31-103 (Registration Requirement and Exemptions) and National Instrument 45-106 (Prospectus and Registration Exemptions) and related rules and amendments to both of these instruments. If you have any questions regarding how these regulations will affect your business, please contact the ASC or your lawyer.

## EDUCATION CORNER

### Real Estate Re-licensing Education Program

The next real estate and mortgage broker Re-Licensing Education Program (REP) courses – *Real Estate Update 2009-2010* and *Mortgage Broker Update 2009-2010* – will be launched on October 1, 2009. All real estate and mortgage industry members will be required to complete the applicable course prior to renewing their authorization on September 30, 2010. For your convenience, the course will be available online through RECA's website/education portal, as well as in the classroom.

In keeping with Council's policy with respect to re-licensing education, REP for the coming registration year will focus on:

- Legislative updates with information on changes to the *Real Estate Act*, Rules, or Regulations, as required.
- Legal updates with decisions stemming from relevant court cases and/or RECA hearings that will be of interest to industry members.
- Emerging issues, which may include items that have been brought to RECA's attention by industry members or consumers. It may also be proactive in anticipating issues that could arise in the coming year.

- Compliance issues, which may include items that have been noted in discussions with industry members or consumers or relate to a gap between an industry practice and legislative compliance.

### **Property Management Course Update**

Since December 2008, the Real Estate Council of Alberta has been offering the *Introduction to a Career in Property Management* course as part of Phase 3 of the Real Estate Associates' Program (REAP). Enrollment in the course has been steady and learner feedback has been positive.

The property management course is required for those individuals entering the real estate industry who wish to trade in real estate conducting property management activities. If you are already authorized for property management activities, you may wish to take this course to enhance your education. The course is available online through RECA. To enroll in the course, please go to the RECA website at [www.reca.ca](http://www.reca.ca) and click on 'RECA Education.'

## **LEGAL CORNER**

In October 2005, a national company (the Buyer) purchased a commercial building in downtown Calgary from the defendant seller. The plaintiff, a real estate brokerage, claims to be entitled to a commission as a result of the sale.

The defendant had purchased the property approximately twenty years earlier. The property was attractive to the defendant because it was located next to a small office building owned by the national company that eventually became the Buyer. The defendant felt it was possible the national company would eventually want to purchase the subject property and an adjacent parkade.

As a result of other commercial real estate business dealings, the defendant had a long acquaintance with a couple of the Buyer's employees. During the 1990s, there were ongoing discussions between the defendant and these employees with respect to the possible sale and purchase of the subject property by the Buyer.

In September 1999, the sale of the property to Buyer was further discussed, but those discussions did not materialize in a sale.

In early 2002, the defendant contacted the plaintiff brokerage. The defendant signed a three-month exclusive listing agreement on May 17, 2002. Under that agreement, the plaintiff became the exclusive agent to sell the property with a three per cent commission. It included wording to the effect of requiring a commission payable "should a Sale be made by whomsoever during the currency hereof, or as a result of negotiations or inquiries originating during such currency."

The plaintiff brokerage received a number of offers for the property, but none were acceptable to the defendant. The Buyer was one of the interested parties and in fact, the listing agent identified the Buyer as a potential buyer early on in the listing.

In August 2002, the defendant entered into a second three-month exclusive listing agreement with the plaintiff brokerage. In November 2002, after receiving word of the Buyer's renewed interest in the property, the listing agent met with the defendant and a Buyer's representative, one of the individuals with whom the defendant had a long acquaintance. The meeting did not result in an offer to purchase the property.

The second listing agreement expired in December 2002, but the listing agent continued to market the property to the Buyer and others. In January 2003, the subject property's former listing agent and a Buyer's employee discussed the possibility of the Buyer acquiring the parkade on the other side of the subject property. The Buyer retained the plaintiff brokerage to act as its agent in the purchase of the parkade.

In January 2004, using the plaintiff brokerage as its representative, the Buyer purchased the parkade beside the subject property.

As the purchase of the parkade was finalized, there was increased activity with respect to the purchase of the subject property. The former listing agent continued to meet with Buyer representatives and the defendant seller throughout 2004 to present offers and counter-offers, though there was no listing agreement between the defendant and the plaintiff brokerage.

In April 2005, a different company made an offer to purchase the subject property and the defendant indicated to the former listing agent that he should see if this new offer would bring the Buyer back to the table. Nothing came of this communication.

This was the last time, prior to the eventual sale of the subject property on October 29, 2005, that the plaintiff brokerage's agent was in touch with the Buyer or made any other efforts to sell the subject property.

A Buyer's employee enlisted the assistance of another Buyer employee, who also had a long acquaintance with the defendant seller. In March and July 2005, Buyer representatives met directly with the defendant with respect to the subject property. They were no longer communicating through the former listing agent as they understood from the defendant that the listing agreement had expired.

The Buyer representatives brought an offer to purchase the subject property to their July 2005 meeting with the defendant. By the end of the meeting, the Buyer's offer to purchase was accepted.

The subject of a commission for the plaintiff brokerage arose at the July meeting. According to the defendant, the Buyer asked him if there would be a commission payable. The defendant brought out the second listing agreement, and the parties concluded that it had expired. Though the defendant told him no commission was payable, the defendant also indicated he wanted some protection in respect of a commission nevertheless. In the event that a commission was payable, the defendant asked that the Buyer pay half of it, with which they agreed.

In November 2005, the plaintiff became aware the defendant had sold the subject property to the Buyer. The defendant and the plaintiff were not able to come to an agreement with respect to commission and the plaintiff brought the matter to court.

The plaintiff claimed entitlement to a commission on the basis of breach of contract (pursuant to the terms of both listing agreements it signed with the defendant) and on the basis of *quantum meruit*.

Since the sale to the Buyer occurred long after the second listing agreement expired, the plaintiff must establish that the sale occurred as a result of negotiations or inquiries originating during the listing agreement(s).

The defendant seller and the Buyer were not introduced to each other as a result of the defendant's agreements with the plaintiff. Though the listing agent worked to negotiate a sale between the defendant and the plaintiff, the judge was not satisfied those efforts materially contributed to the deal that was eventually signed.

The plaintiff failed to establish entitlement to a commission under the terms of the first and second listing agreements. Alternatively, the plaintiff contends that it is entitled to a commission on the basis of *quantum meruit*, and relied on section 22(b) of the *Real Estate Act*.

Pursuant to s.22 of the *Real Estate Act*, an agent may bring an action for a commission only if a) there is a written agreement; or b) there is no written agreement but the person sought to be charged has employed the services of the broker and has effected a sale of lease of land as a result of the broker's efforts. *Quantum meruit* is not available under s.22(b) where a written listing agreement has expired.

In a previous matter, the Court of Appeal found that in "a claim based on *quantum meruit*, the case law makes it clear that where there is an enforceable written contract *quantum meruit* can only be raised if the defendant has acted wrongfully." There was clearly an enforceable written agreement between the parties, and as such *quantum meruit* is only available on proof of wrongful conduct by the defendant. The plaintiff did not establish that the defendant acted wrongfully.

There is a second reason why the claim in *quantum meruit* failed. The plaintiff and defendant agreed that to succeed, the plaintiff must prove the defendant was enriched as a result of the services provided to them by the plaintiff and that the plaintiff suffered a corresponding deprivation. The claim failed to establish that the defendant was enriched as a result of the plaintiff's efforts.

The judge found that the plaintiff failed to prove entitlement to a commission under the listing agreements or in accordance with the principles of *quantum meruit*. The claim is dismissed.

If you are interested in the case reference, please contact RECA communications at: [communications@reca.ca](mailto:communications@reca.ca),

## RE-LICENSING EDUCATION PROGRAM

### Appraisers

Real estate appraisers and candidates must complete the *Mortgage Fraud Awareness* course before they renew their licence on September 30, 2009. This course qualifies for 3 credits/hours with the professional appraisal associations' continuing professional development programs.

The *Mortgage Fraud Awareness* course is available online through the Alberta Real Estate Association (AREA). Please contact AREA for more information at <http://www.abrea.ab.ca>.

If, as a result of licensing as a real estate or mortgage industry member, you have, in the past, completed the 6-hour *Risk Reduction and Mortgage Fraud Awareness* or the 3-hour *Mortgage Fraud Awareness* course, you are not required to complete the *Mortgage Fraud Awareness* course again. Please check your education record through RECA Online to confirm whether you have completed the education requirement. In the event that you have completed either course, but it is not noted online, please contact a RECA Information Officer at (403) 228-2954 or 1-888-425-2754.

### Real Estate

There is no REP for real estate industry members to renew their licence on or before September 30, 2009.

### Mortgage

There is no REP for mortgage industry members to renew their licence on or before September 30, 2009.

## Reduced Licensing and Registration Fees

Effective July 1, 2009 through to September 30, 2009 the licensing and registration fee for each class of authorization will be reduced to \$100. The REIX premium, if applicable,

will also be reduced to \$100. This fee reduction applies to new applicants and those applicants who have not been registered in the current licensing year. The Assurance Fund levy does not change.

**Application fee amounts applicable to licence renewals in September are subject to approval by the Real Estate Council of Alberta and will be announced in early August.** To view the current Fee Schedule and Payment Form, [click here](#).

## Licence Cancellations

### **Dave Huynh - Mortgage Associate Licence Cancelled**

On May 25, 2009, pursuant to s.38 of the Rules made pursuant to the *Real Estate Act*, the Real Estate Council of Alberta cancelled the licence of Dave Huynh, registered as a mortgage associate with Centum Elite Mortgage in Edmonton.

The cancellation occurred because false or misleading information had been supplied in the licensing process and it would harm the integrity of the industry, bring the industry into disrepute and not be in the public interest to continue to license him.

As a result of this cancellation, Dave Huynh may not deal in mortgages in Alberta at this time. The cancellation of Mr. Huynh's licence does not affect the trading activities of Centum Elite Mortgage.

Pursuant to section 39 of the *Real Estate Act* Rules, a person whose licence has been suspended or cancelled pursuant to section 38 of the Rules may request a review of the decision. Mr. Huynh requested such a review, and upon review, the decision of the executive director was upheld. As a result, Mr. Huynh's licence remains cancelled.

### **Rani Gurmit Duhra - Real Estate Associate Licence Cancelled**

On May 22, 2009, pursuant to s.38 of the Rules made pursuant to the *Real Estate Act*, the Real Estate Council of Alberta cancelled the licence of Rani Gurmit Duhra, real estate associate, most recently registered with Vision Realty Inc. o/a Century 21 Bravo Realty of Calgary.

The cancellation occurred as it would harm the integrity of the industry and bring the industry into disrepute as well as not be in the public interest to continue to license her.

As a result of this cancellation, Rani Gurmit Duhra may not trade in real estate in Alberta at this time.

## Licence Suspensions

### **Cherie Ann Birch – Suspended from Authorization**

On July 21, 2009, Cherie Ann Birch's authorization to trade in real estate and deal as a mortgage broker was suspended for a period of four months by a consent order of a

hearing panel of the Real Estate Council of Alberta. She was also ordered to pay a fine in the amount of \$44,625 and costs in the amount of \$2,000. Following her suspension, Ms. Birch will be required to have weekly supervisory meetings with her broker or designated broker, and diligently and in a timely manner submit to her brokerage all trade documents and records for a period of 24 months.

Ms Birch was previously registered as a real estate associate with Re/Max Real Estate Lethbridge and was most recently registered as a mortgage broker with Centum Professional Mortgage Group.

#### **James D. Mercier - Real Estate Associate Licence Suspended**

On June 24, 2009, pursuant to Section 53(1)(a) of the *Real Estate Act*, the Real Estate Council of Alberta temporarily suspended the authorization of James D. Mercier, a real associate registered with Twin Oakes Real Estate 1993 Inc. o/a Re/Max House of Real Estate in Calgary pending the outcome of conduct proceedings under Part 3 of the *Real Estate Act*.

As a result of this suspension, Mr. Mercier may not trade in real estate in Alberta at this time. Mr. Mercier's suspension does not affect the trading activities of Twin Oakes Real Estate 1993 Inc. o/a Re/Max House of Real Estate.

#### **Oldin Yadir Maldonado - Real Estate Associate Licence Suspended**

On June 9, 2009, pursuant to s.38 of the Rules made pursuant to the *Real Estate Act*, the Real Estate Council of Alberta suspended the licence of Oldin Yadir Maldonado, real estate associate registered with Elite Ownership Group Ltd. operating as Re/Max Elite in Edmonton, Alberta.

As a result of information received by the Real Estate Council of Alberta, it was concluded that a suspension of Mr. Maldonado's license was in the public interest. As well, it was determined the continuation of his license would harm the integrity of the industry and bring the industry into disrepute.

As a result of this suspension, Oldin Yadir Maldonado cannot trade in real estate in Alberta at this time.

#### **Sanjay Sharma - Real Estate Associate Broker Licence Suspended**

On June 4, 2009, pursuant to section 53(1)(a) of the *Real Estate Act*, the Real Estate Council of Alberta temporarily suspended the authorization of Sanjay Sharma, an associate broker trading in real estate and registered with Best Buy Realty operating in Edmonton, pending the outcome of conduct proceedings under Part 3 of the *Real Estate Act*.

Allegations against Mr. Sharma include that he failed to fulfill his fiduciary duties, failed to disclose a conflict of interest, participated in fraudulent or unlawful activities in connection with provision of service and engaged in conduct that undermines the confidence in the industry.

As a result of this suspension, Mr. Sharma may not trade in real estate in Alberta at this time. Mr. Sharma's suspension does not affect the trading activities of Best Buy Realty.

### **Troy Lyle Zimmerling - Mortgage Associate Licence Suspended**

On, May 14, 2009 pursuant to Section 38(4.2) of the *Real Estate Act*, refusing to cooperate with a person conducting an investigation, the Real Estate Council of Alberta temporarily suspended the authorization of Troy Lyle Zimmerling, currently unregistered, pending the outcome of conduct proceedings under Part 3 of the *Real Estate Act*.

As a result of this suspension, Troy Lyle Zimmerling may not deal in mortgages in Alberta at this time.

## **CASE SUMMARIES**

### **AUDIT ADMINISTRATIVE PENALTIES**

#### **The Triton Group Inc. o/a Sutton Group Taber Realty (April 2009)**

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*.

\$1,000

#### **Dumasi Real Estate Inc. (April 2009)**

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*.

\$1,000

#### **TRC Realty Management Inc. (April 2009)**

Pursuant to section 90 of the Rules made pursuant to the *Real Estate Act*, the Brokerage is required to report to Council at their fiscal year end with regard to the operation of its accounts in which money is held in trust. The Brokerage failed to report the operation of its accounts in which money is held in trust to the Real Estate Council of Alberta. Breach of s.90 and s.91(4) of the *Real Estate Act Rules*

\$1,500

#### **CMS Canada Corporation o/a Paladin Group CMS (May 2009)**

The Brokerage failed to submit to the Real Estate Council of Alberta the required 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*.

\$ 500

#### **1128632 Alberta Ltd. (May 2009)**

The Brokerage failed to submit to the Real Estate Council of Alberta the required documents not later than 3 months after the end of the brokerage's fiscal year. Breach of s.91(4) of the *Real Estate Act Rules*.

\$1,000

### **ADMINISTRATIVE PENALTIES**

May 2009

Lyle Magnuson, broker  
Magnuson Realty Ltd.

- Failure to provide competent service (s.41(b) of the *Real Estate Act* Rules)
- Mr. Magnuson failed to provide sufficient or any advice to his buyer clients concerning whether GST would be owed prior to their signing the purchase contract or at all. The buyers found out they owed GST (approximately \$31,000) after they waived all conditions.
- \$3,000 Administrative Penalty

June 2009

Patricia Bedry, associate  
Tempo Real Estate Ltd. o/a Royal LePage Benchmark

- Discouraged a client, customer or a party to a trade in real estate or deal in mortgages from seeking legal counsel or expert advice (s.42(d) of the *Real Estate Act* Rules)
- Despite being aware that a property was listed, Ms Bedry presented her buyer client's offer to a seller without the knowledge, presence or consent of the seller's representative. Notwithstanding that the seller pointed out he did not have his representative present and thus no one was protecting his interests in the transaction, Ms Bedry continued with the negotiation and completion of the offer to purchase. Ms Bedry failed, without reasonable excuse, to provide any notice of the completed offer to purchase to the listing brokerages until the next day despite her ability to contact the listing brokerages or designates.
- \$1,500 Administrative Penalty

## **CONSENT AGREEMENT**

June 2009

Randall Mader, associate broker  
856442 Alberta Ltd. o/a Quest Realty

Issues:

- Interfered with a contractual arrangement related to real estate [s.7(h) of the Code of Conduct, as it was then]
- Failed to be professional in his dealings with other industry members [s.7 of the Code of Conduct, as it was then]

Facts:

- On or about December 8, 2005, XYZ Homes entered into a real estate listing contract with real estate associate, Mr. R, for the sale of vacant land.
- The property was immediately placed on the Multiple Listing Service® (MLS®).
- On or about January 2, 2006, Randall Mader showed his buyer client, Mr. B, the property. Mr. B was looking for land to purchase with the intention of building a new home on the land.

- When this showing took place, Mr. R's real estate signs along with the signs of XYZ Homes were on the property.
- On or about January 2, 2006, Mr. Mader presented an offer to purchase on behalf of Mr. B to Mr. J. Mr. J was one of the principals/owners of XYZ Homes.
- On or about January 2, 2006, final acceptance was reached between the parties for the purchase of the property.
- After final acceptance, Mr. Mader attended at XYZ Homes' office again and presented a commission agreement that, if signed, would entitle Mr. Mader to a set amount of commission.
- Mr. Mader presented the commission agreement to Mr. J for his signature and Mr. J told him he thought his father (who was also a principal/owner of XYZ Homes) had a listing agreement with Mr. R, so he would check what the agreement was and agreed that whatever the agreement was between Mr. R and his father, Mr. Mader would be paid the same amount.
- Mr. Mader maintains that during his original conversations with Mr. J, he asked Mr. J twice if the property was listed for sale with a real estate associate and Mr. J told him it was not.
- Mr. J advised a RECA investigator that when the commission agreement was presented to him for his signature, he told Mr. Mader he would not sign it as the property was listed with Mr. R.
- Mr. Mader did not contact Mr. R to determine if Mr. R had any arrangement with XYZ Homes regarding the sale and/or listing of the property.
- Mr. Mader also did not check MLS® to see if the property was listed.
- Mr. Mader maintains that he accepted Mr. J's word that the property was not listed as he had done business with Mr. J and his father for more than 20 years.
- Mr. R, the property's listing agent, became aware of Mr. B's real estate purchase contract and contacted Mr. Mader asking him for a copy it.
- Between January 2, 2006 and February 7, 2006, Mr. J asked Mr. Mader on two or three occasions to provide the purchase contract and Mr. Mader failed to do so.
- Mr. Mader told Mr. R he wanted to see a copy of Mr. R's listing agreement for the property first before he would provide the purchase contract to him.
- Mr. Mader also told Mr. R if he wanted a copy of the purchase contract, he could contact Mr. J and request it.

Results: The Hearing Panel ordered Randall Mader to pay a fine of \$2,500, costs in the amount of \$250 and complete an educational requirement.

## Council Members

### **Ralph Salomons** (*chair*)

Real estate brokers trading in commercial real estate

### **Richard Parker** (*vice chair*)

Public member appointed by the minister of Service Alberta

### **Pat Rudiger** (*past chair*)

Real estate brokers trading in residential real estate

### **Gary Siegle**

Alberta Mortgage Brokers Association

### **Chris Anderson**

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**Contact RECA**

The Regulator is published by the Real Estate Council of Alberta. Please forward your comments and suggestions to [communications@reca.ca](mailto:communications@reca.ca).

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