

Regulator – September 2009

RENEW NOW

All real estate and mortgage broker industry members **must have their registration renewed no later than September 30, 2009**. The *RECA Online* system is available for brokers to renew industry members registered with the brokerage. Payment may be made online through Visa or MasterCard and is applied to the brokerage account immediately in order to begin the processing of applications. Payment may also be made by one cheque payable to RECA in an amount to renew all industry members of the brokerage. Please allow two working days after receipt by RECA for the brokerage cheque to be credited to the brokerage account.

All brokers should have received a renewal information package in the mail from RECA. Upon receipt of the package:

- review the renewal instructions and material contained in the package
- log-in to the RECA Online system, and download renewal forms for each industry member registered with your brokerage
- have your industry members complete their renewal forms, and ensure the completed forms are commissioned by a Commissioner for Oaths and signed by the industry members
- review the completed application forms and complete the broker acknowledgement portion
- process renewals for each industry member registered with your brokerage using RECA Online

Do not wait until the last minute to process renewals. If there are unforeseen issues that cause a delay, an industry member's registration may not be renewed by September 30.

There are no professional development requirements for real estate and mortgage broker industry members to complete by September 30, 2009.

If any industry member registered with your brokerage answers "YES" to a question in Section C - Information Respecting Suitability, the completed application **MUST** be sent to RECA for processing along with any and all supporting documentation from the industry member in question. "YES" answers

should only be given with respect to events and/or situations that have occurred since the date of the industry member's last application.

If you have questions about the renewal process, please **contact your broker**. If your broker cannot answer your question, please have your broker make the inquiry to RECA as broker inquiries are given priority response.

Appraisers and Candidates Renew Now!

All real estate appraisers and candidates **must renew their licence no later than September 30, 2009**. The *RECA Online* system is available to process your licence renewal in order to continue to provide real estate appraisal services. Payment may be made online through Visa or MasterCard and is applied to your account immediately to begin processing. Payment may also be made by cheque payable to RECA in an amount equal to the cost of renewing your licence (\$425). Please allow a minimum of two working days after receipt by RECA for your cheque to be credited to your account.

Your licence renewal must be processed using the *RECA Online* system. Do not wait until the last minute to process your renewal as RECA will not process your application for renewal unless there is a suitability issue as a result of a positive answer in Section C. If there are unforeseen issues that cause a delay, your licence may not be renewed by September 30. All appraisers and candidates have been provided with a package of information to gain access to the *RECA Online* system.

Please contact RECA immediately if you have not yet received your licence renewal package. Upon receipt of the package:

- review the renewal instructions and material contained in the package;
- log-in to the RECA Online system, and download your renewal form;
- review the information on your form for accuracy, complete the balance of the form, and have it commissioned by a Commissioner for Oaths; and,
- process your renewal using RECA Online. Remember you must submit your renewal fee using RECA Online before processing your application.

Appraisers and candidates are reminded that they must complete a *Mortgage Fraud Awareness* course prior to renewing their licence, and they can use the *RECA Online* system to confirm if they have completed the required course. To do so:

- Log onto RECA Online using your RECA ID and password.
- From the next screen, under "Action," select "Education" in the drop down menu and click on "Go."
- If you have completed the course and the course provider has provided RECA with confirmation of course completion, the course will show on the next screen and you have nothing further to do with respect to the current REP.

- If the next screen does not show the *Mortgage Fraud Awareness* course and you believe you completed it, please contact your course provider. Course providers are responsible for confirming with RECA that an industry member has completed the course.
- If you have not yet completed the required course, please contact the Alberta Real Estate Association (AREA) for more information at <http://www.abrea.ab.ca>.

RECA encourages appraisers and candidates to complete their required course in advance of September 30, 2009, keeping in mind they should allow a minimum of 48 hours in advance of September 30 to ensure that their completion of the course is recorded in the RECA database so that they can renew their licence.

If you have answered "YES" to any question in Section C - Information Respecting Suitability, you must send your completed application to RECA for processing along with any and all supporting documentation. "YES" answers should only be given with respect to events and/or situations that have occurred **since the last date of your application**. Applications with "YES" answers must be received by RECA well in advance of September 30, 2009 as they require additional processing time. Do not forward your application if the answers to Section C were negative; instead retain it with your files.

Renewal: Frequently Asked Questions

I'm a broker (or candidate/appraiser) and I have added money to my RECA Online account, am I renewed?

No, after adding money to your RECA Online account, you must then process your renewal (and your brokerage's renewal and renewals for any industry members registered with your brokerage, as the case may be). Simply adding money to your account does not renew you.

What happens if a real estate or mortgage associate/associate broker's renewal is not processed prior to October 1, 2009?

If an industry member has not been renewed prior to October 1, 2009, that industry member will no longer be authorized to trade in real estate, deal in mortgages or provide real estate appraisal services, as the case may be. Their former broker – or another broker – can register them on a future date provided the individual completes the appropriate application form (*Associate/Associate Broker Application for Registration*). Note, that if the individual remains unregistered for one year or more, he or she will be required to obtain a Certified Criminal Record Check prior to returning to the industry.

What happens if a broker/brokerage fails to renew prior to October 1, 2009?

In the case of a broker/brokerage, the brokerage must cease operations immediately and complete a closing audit for RECA. Once the brokerage has ceased operations, all individuals who were registered with that brokerage are no

longer authorized and must immediately cease trading in real estate or dealing in mortgages as the case may be until such time as they are registered with another brokerage.

What happens if an appraiser/candidate fails to renew prior to October 1, 2009?

If an appraiser/candidate does not renew prior to October 1, 2009, that individual is no longer authorized to provide real estate appraisal services and must immediately cease operations. In order to relicense with RECA, the appraiser/candidate must complete a *Real Estate Appraiser/Candidate Licence Application* and send it to RECA for processing. RECA will also request that the appraiser/candidate complete a statutory declaration confirming that they have not provided any real estate appraisal services during the period they were not authorized (i.e. from October 1, 2009 until the date on which they re-license with RECA), along with written confirmation from their professional appraisal organization that they remain a member in good standing.

I'm an appraiser/candidate and will not be able to complete the mandatory Re-licensing Education Program course before September 30, 2009. What options do I have?

Appraisers/Candidates that anticipate not completing their education requirements by September 30, 2009 and wish to remain authorized may request an extension of the professional development requirement from the RECA executive director. In order for the executive director to consider the request for extension, the following is required:

- The request must be made in writing and signed by the industry member. It must also state the reason(s) why the industry member was unable to comply with the educational requirement by the September 30, 2009 deadline.
- The industry member must outline a proposed schedule or plan for completing the mandatory course. The plan should state the course that will be taken and the date (must be within 30 days from October 1, 2009).
- A fee of \$450.00 payable to the Real Estate Council of Alberta must accompany the letter of request. This fee is in addition to the applicable renewal fee and/or course fee.
- The request should be accompanied by a copy of the industry member's completed renewal application.
- Industry members may be asked to provide additional information.
- Completing the course within the timeframe approved by the executive director will be imposed as a condition of granting a licence. Failure to comply will result in the cancellation of the industry member's licence and authorization to carry on the practice of a real estate appraiser.
- Extension applications with payment by Visa or MasterCard may be faxed to the RECA office at 403-228-3065. Please allow a minimum of **five** days for processing.

I have a "YES" answer in Part C – Information Respecting Suitability on my renewal form. What now?

If you have a “YES” answer in Part C respecting suitability, your broker will not be able to process your renewal using RECA Online. Your completed renewal application form must be forwarded to RECA for processing, along with any documentation related to your “YES” answer. Because it will take RECA time to review your application form and the accompanying documentation, ensure this information is sent to RECA well in advance of the September 30, 2009 renewal deadline in order to avoid an interruption in your authorization.

An industry member registered with my brokerage wants to add/delete or change their also-known-as name, can I process this change along with their renewal using RECA Online?

No. Any change of an also-known-as name must be forwarded to RECA for approval and processing. However, a broker is able to process the industry member’s renewal without changing the also-known-as name and then forwarding the name-change documentation to RECA at a later date.

How can I check if my broker has renewed my registration with RECA?

On October 1, 2009, you can visit www.reca.ca and click on the “Search for An Industry Member” button in the Industry Member section of the website. After clicking on that button, type in your last name in the “Query Licence Status by Last Name” and click on the binoculars. In the results, in the status column, there will be a green light to indicate you are currently registered and authorized to conduct activities for your class of licence. If your name does not appear in the results after you have searched via your last name, then your broker has not renewed your registration and you are not authorized to conduct the business of an industry member for your class of licence. Contact your broker immediately.

NOTE: The same search function is available for candidates and appraisers to confirm they have processed their licence renewal.

Message from Council

Ralph Salomons, Chair

Practical planning

At its August meeting, Council set a practical course for the next two years of its business plan. Though it had to face some tough decisions with respect to the budget and the business plan initiatives, Council members are confident the course they have chosen will give RECA a strong foundation to be able to carry out its mandate into the future. Council’s approach will ensure a strong and responsible future of self-regulation for our respective industries.

Brokerage adopts designated agency

A Calgary-area brokerage, Royal LePage Foothills, has declared itself as a designated agency brokerage as of September 1, 2009. Royal LePage Foothills, which has more than 200 registered industry members, is the first brokerage to adopt designated agency. RECA worked closely with Royal LePage Foothills throughout its decision-making and implementation process answering questions on the practical aspects of how designated agency would work on a daily basis. In addition, to assist brokerages in making the transition to designated agency, RECA has prepared a number of tools such as:

- Exclusive Buyer and Seller Designated Brokerage Agreements;
- Non-exclusive Designated Brokerage Agreement for Buyers;
- Interim seller agreements for commercial and agricultural real estate; and,
- *Designated Agency Practice Guide for Industry Members.*

all of which are available on the RECA website at www.reca.ca

“Formally adopting designated agency business practices made sense to me. The expectations of buyers and sellers are that their industry member will act in their best interests unless that person is acting for both parties,” says Ted Zaharko, broker of Royal LePage Foothills. “We realized that in our current business practices, we were essentially working as designated agents, but we needed to formally adopt documentation and forms to match the practices within the brokerage.”

Because the agency relationship is between the client and the designated agent(s), designated agency eliminates the conflicts of interest that commonly arise in a brokerage when two industry members from the same brokerage represent the buyer and seller in the same transaction. Designated agency enables industry members to act as sole agents and provide full fiduciary duties to all clients except in the limited circumstance where the same designated agent(s) represents the buyer and seller in the same transaction.

New leadership

This Regulator message marks the last time I will be providing an update on Council activities as my term as Council chair will end on October 31; a new chair will be elected at Council’s November meeting. My time as Chair has been a rewarding experience for me as it has given me the opportunity to closely work with 11 hard-working, knowledgeable and supportive Council members for the betterment of our industries.

I would also like to take this opportunity to thank outgoing members of Council for their hard work and dedication. Both Pat Rudiger, who has been a member of Council for the past six years as an appointee of the Alberta Real Estate Association (AREA), and Chris Anderson, who joined Council in November 2006 as the non-AREA appointee, have made invaluable contributions to Council’s work. Their knowledge, expertise and desire to strengthen our industry will be greatly missed around the Council table.

In closing, I owe sincere thanks to Bob Myroniuk, executive director of RECA, and his staff for their hard work and tireless dedication in performing Council's mandate and moving Council's many business plan initiatives forward.

RECA RESEARCH UNCOVERS POSITIVE RELATIONSHIP BETWEEN CONSUMERS AND MORTGAGE INDUSTRY MEMBERS

RECA research uncovers positive relationships between consumers and mortgage industry members

The Real Estate Council of Alberta (RECA) recently commissioned Weaver Marketing Research (WMR) to assist RECA in determining the extent to which consumer and industry research could assist in RECA's ongoing decision making processes. This was accomplished through an RFP process on a pilot project to learn more about how the mortgage brokerage industry is perceived by consumers, what consumer perceptions and expectations are before and after using a broker, and to what degree mortgage brokerages are complying with the RECA disclosure requirements contained in the Mortgage Broker Disclosure Document.

Focus groups bring good news

WMR conducted focus groups in Calgary and Edmonton in June 2009. One focus group in each city was for participants who have used the services of a mortgage broker in the past 12 months, and the second focus group in each city was for participants who intend to use a mortgage broker in the next 12 months. Overall, the results of WMR's research are positive news for Alberta's mortgage brokerage industry.

For obvious reasons, the responses were different between the two groups as a direct result of one group having already used the services of a mortgage broker. Overall, the individuals who had used a mortgage broker had a positive experience. The group that had not yet used a mortgage broker was more reserved and not as informed as the other group, however they anticipated a positive experience.

In the summary of WMR's report it states:

“consumer understanding of compensation and relationships in the mortgage brokerage industry varies considerably, depending on the prior real estate experience of the individual and also on their personal level of interest in being informed. Nevertheless, it appears that a majority of consumers go in to the transaction with a reasonably accurate but very *high-level* sense of what a broker will do for them. It further appears that some more detailed information about industry relationships and compensation is being disseminated to most consumers much of the time;

however the format and comprehensiveness of the information is highly inconsistent.”

As each of the focus groups progressed and more information was provided to participants, such as the Mortgage Broker Disclosure Document, participants’ understanding increased and there was a general acceptance of a number of concepts.

The WMR report further states:

“After lengthy group discussion and review of the Mortgage Broker Disclosure document, new learnings evolved that demonstrated the close relationship of the broker to the lender. By the end of the groups therefore, these participants tended to shift more toward the idea that a mortgage broker acted as an *intermediary* between borrower and lender, all the while maintaining a responsibility to serve the interests of their client. The potential “conflict of interest” presented by this arrangement did not seem to trouble most respondents. They continued to believe they were receiving elevated customer service and obtaining better mortgage rates and terms than they would obtain independently.”

Focus group participants who have previously used the services of a mortgage broker indicated that they had a pre-existing sense of trust with a mortgage broker because in most cases another person of trust had referred them to the broker. While some participants initially focused on the rate that the broker could arrange, it became apparent that it was not so much the rate as the overall terms and conditions of the mortgage that is of key importance.

Other findings of the focus groups indicate that:

- Most consumers have never paid much attention to the type of relationship they have with their broker, even if their broker had disclosed the type of relationships available
- Most consumers enter into a relationship with a mortgage broker with a reasonably accurate sense of what a broker will do for them
- Consumers perceive a strong broker-borrower relationship despite the broker having a lender-broker relationship. Consumers perceive that their broker always works on their behalf.
- Consumers have little concern for how a broker gets paid as long as it is not by them. Most consumers are aware that the lender pays commission; however, there is some concern among consumers about fees being charged to the consumer. There was increased attention paid to potential trailer fees as part of the brokerage’s compensation once they were aware that they may exist;
- After reviewing RECA disclosure document for mortgage brokers, consumers became increasingly curious about the potential relationship options
- Consumers are largely unaware of industry safeguards and what governing bodies might exist, however they assume some must exist

- Consumers seemed willing to learn about the types of relationships their broker might have with them and potential lenders if the information was provided in an accessible manner
- Most brokers are complying with relationship disclosure requirements, but only to the extent that their clients seem interested and willing to absorb that information
- Consumers desire a standardized form for distributing relationship information, made available to everyone prior to speaking with brokers so they can “shop around”
- Differing levels of understanding in the industry means dissemination of such standardized information should be layered, first in very simple terms then in more complex terms for more savvy consumers

The findings of the focus groups confirm that consumers have a positive view of the mortgage brokerage industry, that they perceive the broker as working in their best interest at all times, and that they have little concern for broker-lender relationships, types of compensation or regulatory safeguards. However, upon learning more about how brokerages work and the types of relationships brokers might have with clients and with lenders, focus group members became more interested in the information brokers are supposed to provide about potential relationships and compensation.

The final summary of the report comments:

“Group discussions provided some insights in to what consumers are looking for and are willing or interested to receive. It suggests that consumers who currently do not find industry disclosure information to be of value or relevance can be convinced to shift this view, with a bit of information pointing out *what they now don't know*. It points to the value of better publicity and communication about the existence and function of RECA and the disclosure regulations, and suggests a mandatory, standardized multi-level approach for satisfying information needs of a broad spectrum of home-buyers.”

RECA will use this research to create more effective standards of practice and materials for use by the mortgage industry.

RECA is pleased to sponsor a presentation by Sheila Weaver of WMR on this research as part of the Alberta Mortgage Brokers' Association (AMBA) 2009 Conference and Tradeshow on September 10 at the Telus Convention Centre in Calgary. Contact AMBA at (403)685-9652 for more information.

CONDUCT THAT HARMS THE INTEGRITY OF THE INDUSTRY

Summary: An industry member must not engage in conduct that undermines public confidence in the industry, harms the integrity of the industry, or brings the industry into disrepute. [See: *Real Estate Act* Rules s.38(d), s. 42(g)]

Conduct of industry members not directly associated with a trade in real estate, deal in mortgages, real estate appraisal or the provisions of services, may constitute conduct deserving of sanction when such conduct undermines public confidence in the industry, harms the integrity of the industry or brings the industry into disrepute. [*Real Estate Act* Rules, s. 42(g)].

The Real Estate Council of Alberta (RECA) recognizes the conduct of an industry member outside of their industry activities affects the public's respect for the industry. There is a broad range of activity that could fall into this category with varying degrees of seriousness and impact on the industry overall. In some cases, industry members who engage in such conduct may also be subject to suspension or cancellation of their licence [*Real Estate Act* Rules, s. 38(d)]. The seriousness of the conduct, and its impact on the integrity of the industry, will be considered in determining how such conduct will be viewed by RECA.

The following is a list of examples of conduct that may be a breach of section 42(g) of the *Real Estate Act* Rules:

- misconduct in another occupation, industry or profession.
- defaming or harming the reputation of a client, member of the public or another industry member by verbal or written statement.
- a disregard for the welfare of members of the public served by industry members.
- destroying documents, threatening a witness or in any way interfering with an investigation or legal proceeding.
- illegal or criminal activities e.g. theft, assault, money laundering, drug dealing, tax evasion, breach of trust, grow-ops etc.
- membership in a criminal or illegal organization.
- swearing a false affidavit or declaration.
- providing false evidence (perjury) in civil or criminal proceedings.
- defaming or harming the reputation of a hearing panel member, appeal panel member or any representative of the Real Estate Council of Alberta by verbal or written statement.

As the courts or other regulatory or law enforcement bodies may be involved in these types of cases, RECA may not commence an investigation into the conduct of the industry member until the appropriate court or regulatory body renders a judgment or decision in the matter. RECA's approach will depend on the circumstances of each case and public interest considerations.

REAL ESTATE ACT AND RULES APPLY TO BLOG CONTENT

Websites that allow users to create their own personal blog pages hosted on a large central site, free of charge (Blogger, Live Journal, etc.), as well as blog sites of other organizations, have become increasingly popular in recent years, and many industry members are taking advantage of the marketing opportunity they present. Other industry members have created blog sections on their websites. These industry members use their blogs to promote their business, give updates on their industry and the market, and

sometimes to give personal opinions about the industry or about other people or companies in the industry.

Industry members have an obligation to not make representations or carry on conduct that is reckless or intentional and that misleads or deceives any person, or is likely to do so [*Real Estate Act* Rules, s.42(a)]. In addition, industry members must not engage in conduct that undermines public confidence in the industry, harms the integrity of the industry, or brings the industry into disrepute. [*Real Estate Act* Rules, s.42(g)]. The information represented on a blog by an industry member, while holding oneself out as an industry member, falls under the jurisdiction of real estate legislation.

Industry members need to ensure that what is said on their blog meets the requirements of the Rules.

An example of a potentially misleading or reckless blog is where an industry member posts a rumour on their blog about his competitor that the competitor is under investigation by the police for mortgage fraud again. The statement that the competitor has in the past or is currently under investigation for mortgage fraud is found to be false and was just a rumour. The industry member that posted the blog can be held accountable for their actions by RECA and possibly the courts.

A second example of a potential problem on a blog is where an industry member makes derogatory and/or racist comments about a minority group or individual and also identifies themselves as an industry member.

The best practice for posting information on your blog is to verify that it is true.

Remember that a blog on an industry member's website is also a blog of the brokerage. Brokerages should have policies and procedures in place for the management of industry member blogs.

RECA STAFF PLAN ATTENDANCE AT 2009 AND 2010 TRADESHOWS

RECA staff plan attendance at 2009 and 2010 trade shows

RECA will once again be on-hand to answer industry member questions at industry trade shows throughout 2009 and 2010.

RECA will be on the tradeshow floor at the Alberta Mortgage Brokers' Association Conference on September 11, 2009, the REALTORS® Association of Edmonton trade show on October 22, 2009, and at the CREB® Forecast tradeshow on January 20, 2010.

RECA is a resource for industry members and the purpose of RECA's attendance at tradeshow is to provide an opportunity for industry members to have direct contact with RECA staff, to ask questions and provide valuable feedback to RECA.

At the AMBA conference, mortgage industry members will find copies of RECA's annual report and previews of the mortgage consumer articles being developed for the new RECA website, along with new Information Bulletins currently on RECA's website.

Available at the RECA booth at the EREB and CREB member conferences will be copies of RECA's annual report, copies of the *Industry Member's Practice Guide for Transaction Brokerage*, consumer brochures for buying and selling residential property in Alberta, copies of RECA's Agency Relationships Video, and other documents to assist industry members in their day-to-day work.

RECA has attended these tradeshows as an exhibitor since 2007, and industry members have taken advantage of the in-person contact with RECA. RECA values the input it receives from industry members at tradeshows and would like to thank those who have come to the RECA booth at past tradeshows to ask questions and offer comments. RECA looks forward to hearing directly from industry members again at this year's tradeshows.

LIFETIME WITHDRAWALS FROM THE INDUSTRY

Lifetime Withdrawals – *Real Estate Act* section 54

August 2009

Troy Zimmerling, MORTGAGE ASSOCIATE 1284877 Alberta Ltd. o/a Dominion Lending Centres

On August 5, 2009, Troy Zimmerling, mortgage associate, most recently registered to 1284877 Alberta Ltd. o/a Dominion Lending Centres, applied to the Real Estate Council of Alberta (RECA) to withdraw from industry membership in accordance with section 54 of the *Real Estate Act*.

At the time of Mr. Zimmerling's withdrawal application, he was the subject of conduct proceedings to determine whether:

- he failed to provide competent service;
- he made representations or carried on conduct that was reckless or intentional and that misled or deceived any person or was likely to do so;
- he participated in fraudulent or unlawful activities in connection with the provision of services or in any dealings;
- he engaged in conduct that undermines public confidence in the industry, harms the integrity of the industry or brings the industry into disrepute; and,
- he failed to cooperate with a person conducting an investigation.

At the time of the withdrawal application approval, there had been no disciplinary hearing, admissions or findings of fact.

By virtue of operation of the *Real Estate Act*, Part Three conduct proceedings are discontinued. Mr. Zimmerling's application to withdraw was approved by RECA and results in a voluntary lifetime prohibition from industry membership.

Sanjay Sharma, ASSOCIATE BROKER Best Buy Realty Inc.

On August 5, 2009, Sanjay Sharma, associate broker most recently registered to Best Buy Realty Inc., applied to the Real Estate Council of Alberta (RECA) to withdraw from industry membership in accordance with section 54 of the *Real Estate Act*.

At the time of his application, Mr. Sharma was the subject of conduct proceedings to determine whether:

- he failed to fulfill his fiduciary duty to a client;
- he failed to disclose a conflict of interest; and,
- he participated in fraudulent or unlawful activities in connection with the provision of services.

At the time of the withdrawal application approval, there had been no disciplinary hearing, admissions or findings of fact.

By virtue of operation of the *Real Estate Act*, Part Three conduct proceedings are discontinued. Mr. Sharma's application to withdraw was approved by RECA and results in a voluntary lifetime prohibition from industry membership.

EDUCATION CORNER

Real Estate Update 2009-2010

Development of the *Real Estate Update 2009-2010* is wrapping up. This is the Re-licensing Education Program course (RE-REP) that real estate industry members must take prior to **September 30, 2010** in order to renew their licence.

The course is currently in the review stage and, barring any need for modification, RECA plans to offer the course as follows: the online course should be ready for launch at the beginning of October and will be available free-of-charge to industry members in the online format. It can be accessible through the education portal of the RECA website (www.reca.ca), which offers industry members access to the course at their convenience. RECA will also facilitate a classroom version through course providers and instructors, which we anticipate will launch in early November. Delivery details, such as class scheduling, will be at the discretion of course providers.

Mortgage Broker Update 2009-2010

Development of the *Mortgage Broker Update 2009-2010* is following close behind RE-REP and will soon be wrapping up. This is the Mortgage Brokers' Re-licensing Education Program course (MB-REP) that individual mortgage broker industry members must take prior to **September 30, 2010** in order to renew their licence.

Course materials will be undergoing a review over the course of the next few weeks. Barring any need for modification, the course should be ready for launch in early November and will be available free of charge to mortgage broker industry members in the online format. It can be accessible through the education portal of the RECA website (www.reca.ca), which offers industry members access to the course at their convenience.

LEGAL CORNER

A listing contract may say that no commission is payable in certain circumstances; for instance, if the buyer is a certain person. Since the particular circumstances are excluded from those that attract commission, this arrangement is often called a *listing exclusion*.

There is no standard wording for a listing exclusion. If the listing brokerage and seller agree to a listing exclusion, the listing licensee usually drafts the wording and adds it to the listing contract. Where the brokerage uses a preprinted form of listing contract, the licensee often adds the extra wording by hand.

In *Berrettoni v. Hugh & McKinnon Realty Ltd.*, the Supreme Court of British Columbia strictly interpreted a listing exclusion against the brokerage that was claiming commission.¹

The sellers had a long-standing dispute with the couple that owned the lot next door. The dispute arose from a restrictive covenant in the sellers' title in favour of the lot next door. The covenant protected the neighbouring lot's privacy and view by significantly limiting the size and location of any residence on the sellers' property. This also lowered the market value of the sellers' property. In an earlier attempt to remove the restrictive covenant, the sellers unsuccessfully sued their next door neighbours,² one of whom then offered to buy the sellers' property for a low price, which the sellers rejected.

When the sellers listed the property, they told the listing representative they didn't want the property sold to one of the next door owners. Consequently, the licensee added a listing exclusion to the listing contract. The case doesn't quote the actual wording used, but the exclusion apparently said that no commission was payable if the licensee sold the property to an owner next door.

The buyer was a business corporation, which turned out to be a company connected with one of the owners next door. This came to light when, in the course of completing the sale, it became evident that her name would ultimately appear as the new registered owner. Relying on the listing exclusion, the sellers refused to pay commission.

When the brokerage sued the sellers to recover commission, the Provincial Court of BC (Small Claims Division) ordered the sellers to pay it. The court read the exclusion clause in favour of the brokerage by implying two additional terms into the listing exclusion. The court implied that the brokerage would only lose commission if the listing representative *knowingly* sold the property to one of the neighbours next door, and that the listing licensee must show that he diligently tried to discover the identity of the purchaser.

When the sellers appealed, the Supreme Court of British Columbia overturned the lower court's decision. A court will imply a term into a contract where it's clear the parties themselves must have intended it, either because the implied term is necessary for the efficient business of the parties, or where the term to be implied represents the obvious, but unexpressed, intention of the parties. Here, the common intention was to prevent a sale to particular neighbours. The listing exclusion spoke for itself; it wasn't necessary to imply any additional terms into it. The Supreme Court strictly interpreted the wording of the listing exclusion against the licensee.

When drafting a listing exclusion, choose your wording carefully. For instance, when excluding commission if a particular buyer purchases the property, use wording to the effect that no commission is payable if the licensee knowingly facilitates a sale to that buyer, or fails to reasonably inquire into the identity of the purchaser.

Mike Mangan
B.A., LL.B.

1. *Berrettoni v. Hugh & McKinnon Realty Ltd.*, 2008 BCSC 307.
2. *Berrettoni Estate v. Belzberg*, 2006 BCSC 225.

Legally Speaking (429, April 2009). Copyright British Columbia Real Estate Association. Reprinted with permission.

RECA INVESTIGATOR WINS ARELLO AWARD

The Association of Real Estate License Law Officials (ARELLO) Investigator Resource Committee (IRC) has announced that Ron Lawson, investigations coordinator of the Real Estate Council of Alberta (RECA), has been selected as the 2009 recipient of the ARELLO® Investigator of the Year award.

In addition to the international distinction of being named as ARELLO's Investigator of the Year, Ron will be provided with an expense-paid trip to the ARELLO Investigator Workshop. The 2009 Workshop will be held September 1 to 4, 2009, in Little Rock, Arkansas, at which Ron will present his investigation to attendees.

Ron's award-winning investigation involved a sophisticated scheme in which a broker employed intricate and interwoven fraudulent devices to obtain possession of a property and later resell it at an inflated price. The scheme included agency misrepresentations, multiple instances of mortgage fraud, forgery and other means that were used to conceal the true value and ownership of the property, as well as the broker's profits.

Criteria used by the IRC's Award subcommittee include audit/investigative techniques, innovation, use of resources, jurisdictional violations discovered, complexity of case, documentation of evidence, interview skills, creativity, report writing skills and cooperation with law enforcement and/or other government agencies.

Ron joined RECA as an investigator in May 2003, took over the role of registrar in January 2006 and returned to investigations in January 2007. Prior to working for RECA, Ron enjoyed a 23-year career with the Winnipeg Police Service.

Congratulations Ron!

CASE SUMMARIES

Audit administrative penalties

June 2009 – July 2009

Alberta 2500 Group Corp (June 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

Mortgages Are Marvelous o/a Mortgage Alliance “Mortgages are Marvellous” (July 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.92(1) of the *Real Estate Act* Rules.

\$1,500

administrative penalties

June 2009

SHAWN KEYS, FORMER ASSOCIATE EXIT REALTY RESULTS AND RE/MAX REAL ESTATE

- Failure to trade in real estate only in the name that appears on the individual's licence and in the name of the brokerage with which that individual is registered [s.54(1)(a) of the *Real Estate Act Rules*]
- Mr. Keys tendered his resignation with Exit Realty Results on February 28, 2007, and applied to be registered with Re/Max Real Estate on March 2, 2007. However the Re/Max application did not get processed with the Real Estate Council of Alberta until March 16, 2007. Between February 28, 2007 and March 16, 2007, Mr. Keys remained registered with Exit Realty Results. On March 11, 2007, Mr. Keys listed a property through the Re/Max Real Estate brokerage. Although the Re/Max broker informed Mr. Keys that he was not able to trade in real estate under the Re/Max name until the registration had been transferred, Mr. Keys advertised and showed the property under the Re/Max name while still registered with Exit Realty Results.
- \$1,500 Administrative Penalty

SHAWN KEYS, FORMER ASSOCIATE EXIT REALTY RESULTS AND RE/MAX REAL ESTATE

- Failed to immediately notify the executive director, in writing, of a conviction of any criminal offence or any other offence under any law of any country, province or state [s.40(1)(h) of the *Real Estate Act Rules*]
- Mr. Keys was convicted of an impaired driving offence in October 2006. He failed to immediately notify the executive director of this Criminal Code charge, and did not inform the executive director until March 2007 when he was changing brokerages and filling in applications for registration.
- \$1,000 Administrative Penalty

CONSENT AGREEMENTS

July 2009

CHERIE ANN BIRCH

**FORMERLY REGISTERED AS A REAL ESTATE ASSOCIATE WITH 416212 ALBERTA LTD.
O/A RE/MAX REAL ESTATE LETHBRIDGE
MOST RECENTLY REGISTERED AS A MORTGAGE BROKER WITH CENTUM
PROFESSIONAL MORTGAGE GROUP**

Issues:

- Failed to act in her client's best interests [s.2(a) of the Code of Conduct, as it was then]
- Failed to disclose all relevant information to her client [s.2(e) of the Code of Conduct, as it was then]
- Used confidential information obtained from a client for personal gain [s.2(f) of the Code of Conduct, as it was then]
- Failed to disclose a conflict of interest in a trade [s.2(m) of the Code of Conduct, as it was then]
- Failed to obtain informed consent in writing to acting in dual agency prior to entering into a real estate transaction [s.3(b) of the Code of Conduct, as it was then]
- Made a representation that misled or deceived a person or was likely to do so [s.4(d) of the Code of Conduct, as it was then]
- Created a contract that she ought to have known was confusing [s.6(c) of the Code of Conduct, as it was then]
- Participated in fraudulent activities in connection with real estate transactions [s.7(c) of the Code of Conduct, as it was then]
- Failed to keep her broker informed of the activities being performed by her on behalf of the brokerage [*Real Estate Act* Rules, s.23(f), as it was then]
- Traded in real estate on behalf of herself or another person without first disclosing in writing to the parties to the trade her interest as buyer and/or seller, and that she was employed or associated with a licensed brokerage [*Real Estate Act* Rules, s.28(a), as it was then]

Facts:

- Cherie Ann Birch ("Birch") associate broker, was at all relevant times registered with Re/Max Real Estate Lethbridge until July 7, 2003 when she terminated her registration. Birch was not active in the industry again until she registered as a mortgage associate with Centum Professional Mortgage Group on October 30, 2007, and as a candidate appraiser on April 22, 2008.
- This Consent Agreement concerns Birch's activities in 2002 with respect to two properties, the "N" Property and the "M" Property.

The "N" Property

- Mr. N wished to sell a piece of property of which he was sole owner on title.
- The property was listed with a brokerage in 2001. It was listed for \$117,500 in September 2001, which was reduced to \$108,500 in January 2002.
- Mr. R conducted an appraisal of the property on June 17, 2002, indicating a market value of \$110,000.
- At all material times, Birch was acting as agent for Mr. N to whom Birch owed fiduciary duties.
- On June 21, 2002, Birch prepared and obtained execution of a Real Estate Purchase Contract for the sale of the "N" property from Mr. N to

Birch. The purchase price was \$86,000. The initial deposit was \$3,500, with assumption of mortgage of \$55,109.41 and balance owing of \$27,391. The closing date was June 30, 2002.

- Birch did not obtain any written consent to her role as both agent and purchaser nor did she advise Mr. N fully on the conflict of interest.
- Birch did not refer Mr. N to obtain independent advice whether industry member or legal counsel concerning the sale of his property to Birch.
- As a result of her agency relationship with Mr. N, Birch knew Mr. N urgently needed to sell the property due to outstanding bills from the renovations he performed on the house. Birch used this knowledge to purchase the property at a price that was favourable to her and less than fair value for Mr. N.
- On July 5, 2002, Birch prepared Real Estate Purchase Contract for the sale of the "N" Property from herself to Ms K. The purchase price on the initial draft of this contract was \$117,000 based on a \$100.00 deposit, new financing of \$110,000 and balance of \$6,900. The closing date was July 15, 2002.
- Birch did not complete the full names of the parties to the transaction, identifying seller and buyer as "Birch" and "K" respectively.
- Birch did not provide Ms K with written disclosure of her position as an industry member.
- Birch did not provide a copy of either contract to her broker, nor did she inform her broker of her activities, which were on behalf of the brokerage in this transaction.
- Birch did not advise Mr. N of the property's sale to Ms K, which was planned by Birch prior to the closing date of the contract between Birch and Mr. N. This was information that was relevant to the decision of Mr. N to proceed with the sale of his property to Birch.
- After July 5, 2002, but prior to the closing of her contract with Ms K, Birch made amendments to the purchase contract with Ms K, reducing the new financing from \$110,000 to \$104,500, the balance from \$6,900 to \$5,500 and the purchase price from \$117,000 to \$110,000.
- Birch did not obtain initials confirming these amendments.
- Birch conspired with Ms K to have the amended purchase contract delivered to Ms K's lawyer for the purpose of conveyancing and to have the former un-amended contract communicated to the mortgage lender who, relying on the \$117,000 purchase price, would provide new financing at the higher amount.
- When the lawyer for Ms K, who also was acting for the mortgage lender, questioned Ms K about the higher new financing amount, she represented to him that the additional funds were for the purposes of anticipated renovations to the property. No renovations were contemplated nor in fact done.
- On July 18, 2002, Birch obtained Mr. N's signature on a listing contract she prepared with an asking price of \$99,500 for the "N" Property. Further, the term of the listing was stated to be to July 17, 2002, a past date from

- the date of execution. Birch did not at this time, nor at any time before or subsequent, advise Mr. N of the transaction she was pursuing with Ms K.
- Birch did not provide a copy of this listing contract to her broker. The listing contract was confusing and not binding due to the extant and unconditional purchase contract previously executed between Mr. N and Birch.
 - Ms K provided her lawyer with a statutory declaration stating she would reside in the property, which was a condition of the new financing. Ms K did not reside in the “N” Property. On March 30, 2003, the property was transferred by Ms K to Mr. S.
 - Birch organized the purchase of the “N” Property by Ms K for the purpose of obtaining a mortgage that exceeded the purchase price paid to Mr. N, thereby obtaining a personal gain upon further transfer of the property. Birch was aware that Ms K would lead the lender to believe Ms K would reside in the property in order to obtain the mortgage, when this was not true. Birch obtained a financial benefit from this transaction, a benefit that was shared with Ms K, but not with Mr. N.

The “M” Property

- Mr. and Mrs. M, the “Sellers,” were separating and wished to sell their house.
- On July 7, 2002, Birch obtained the signature of the Sellers on a listing contract with an asking price of \$99,000 and termination date of October 9, 2002. Birch prepared and signed this Listing Contract on behalf of her brokerage.
- On August 1, 2002, Birch prepared and obtained the signature of prospective buyers, Mr. and Mrs. H, the “Buyers,” on a real estate purchase contract. The purchase price was \$86,000 based on a \$100 deposit, assumption of a \$74,600 mortgage and balance owing of \$11,300.
- Birch was acting as agent for the Sellers and the Buyers in this transaction.
- Birch did not obtain written consent to her acting as dual agent for both the Sellers and the Buyers.
- Birch did not obtain the \$100 deposit from the Buyers in accordance with the contract.
- Birch did not submit a copy of this contract to her broker.
- The Buyers did not qualify to assume the mortgage and were not able to waive their condition under the contract, so the contract was terminated by condition.
- On September 28, 2002, Birch prepared and obtained the Sellers’ agreement to the sale of their property to 831938 Alberta Ltd., a company of which Birch was shareholder and officer. The purchase contract for this sale, prepared by Birch, provided a purchase price of \$83,000 based on the assumption of the \$74,600 mortgage and balance owing of \$8,400. Closing was on November 1, 2002. The buyer was incompletely identified as “831938 Ltd.”

- Birch did not provide for a deposit to secure the interests of the Sellers.
- Birch prepared a form entitled "Realtor Disclosure" wherein she identified herself personally as the buyer, when the contract showed the buyer as "831938 Ltd." The relation between the buyer and Birch was not identified or explained in this document.
- Birch obtained only the signature of Mrs. M on the Realtor Disclosure and not of the other seller.
- At the bottom of the "Realtor Disclosure," Birch handwrote "I am purchasing the property for resale." At the same time, Birch advised the Sellers she was going to "fix up the home and find a buyer."
- On October 3, 2002, Birch prepared and signed a real estate purchase contract identifying "831838 Alta Ltd." as seller and Mr. W as buyer, with a price of \$107,000 based on no deposit, new financing of \$101,650, balance owing of \$5,350 and closing on October 1, 2002 (prior to the closing of the first sale from the Sellers to 831838 Alberta Ltd.).
- Birch obtained W's signature on this second purchase contract prior to completing it. Birch filled in the contract after its execution and no initials were applied to the amendments.
- Birch did not submit a copy of this contract to her brokerage.
- On October 24, 2002, Mr. W obtained approval for a new mortgage and on October 31, 2002, signed a statutory declaration that it was his "intention to occupy this property as [his] principal residence."
- On November 7, 2002, the Transfer of Title from the Sellers to 831838 Alberta Ltd. for \$83,000 consideration and the Transfer of Title from 831838 Alberta Ltd. to Mr. W for \$107,000 consideration were both executed.
- Birch did not renovate the house.
- Birch did not disclose to Mr. and Mrs. M the amount of the second sale.
- Birch did not disclose to the buyer, Mr. W, her interest in the selling company.
- Mr. W never resided in the property, a Ms P stayed in it as a tenant. On January 16, 2003, the property was transferred to Ms P for consideration of \$108,000.
- At or near the time Mr. W agreed to execute his purchase contract, Birch represented to him that the house would be purchased by Mr. W solely for the purpose of obtaining a mortgage where upon it would be transferred to a handicapped person who otherwise would be unable to qualify for a new mortgage. Mr. W relied on this representation and further believed he would not remain on title of the property for any significant length of time. Birch's representation was false and made only to induce cooperation by Mr. W as a buyer.
- Birch organized Mr. W's purchase of the property for the purpose of obtaining a mortgage that exceeded the purchase price paid to the Sellers, thereby obtaining a personal gain upon further transfer of the property. Birch was aware that Mr. W would lead the lender to believe he would reside in the property in order to obtain the mortgage when this was not true.

- Mr. W was subjected to foreclosure notices and paid his own funds for arrears at a time when he believed he was not the owner of the property.

Results: By way of a Consent Agreement, which was ratified by a RECA Hearing Panel, Birch's authorization to trade in real estate and deal as a mortgage broker was suspended for a period of four months; Birch was ordered to pay a fine of \$44,625 and costs of \$2,000. If Birch returns to the industry following her suspension, she will be subject to weekly supervisory meetings with her broker or designated broker and must submit to her brokerage all trade documents and records for a period of 24 months.

ALLAN LEE, ASSOCIATE

FORMERLY REGISTERED WITH DOG LEG RIGHT REALTY INC. o/a MAXWELL NORWEST REAL ESTATE AND CURRENTLY REGISTERED WITH DISCOVER REAL ESTATE LTD.

Issues:

- Participating in the creation of a document he ought to have known was not legally binding [s.6(c) of the Code of Conduct, as it was then]

Facts:

- Mr. Lee was contacted by Mr. B about purchasing a home for himself and his girlfriend, Ms C.
- Mr. B advised Mr. Lee that Mr. B or Ms C would obtain financing.
- As a result of this, Mr. Lee drafted the offer with 'Mr. B or nominee' listed as the buyer.
- The seller objected to the use of 'or nominee' and as a result it was struck out by agreement, leaving only Mr. B identified as the buyer on the contract.
- Section 8.4 of the contract stated that the buyer may unilaterally waive or satisfy their conditions by giving a notice to the other party on or before the stated condition day.
- The contract was accepted.
- Ms C obtained financing for the property.
- Mr. Lee prepared a Notice to the Seller that Ms C alone signed stating the mortgage financing condition was waived or satisfied.
- The transaction proceeded without amendment of the purchase contract or any additional waiver provided by Mr. B.
- The property was transferred to Ms C.

Results: By way of a Consent Agreement, which was ratified by a RECA Hearing Panel, Mr. Lee was ordered to pay a fine of \$500 and costs of \$200, and was ordered to complete education within six months.

COLLEEN ANNE WALSH, ASSOCIATE

CHALLENGE REALTY LTD. o/a REALTY EXECUTIVES CHALLENGE

Issues:

- Failed to provide competent service [s.6 of the Code of Conduct, as it was then]

Facts:

- Ms S was the owner of a house in Edmonton. She entered into a purchase contract with a numbered company in Alberta on or about September 20, 2005 in order to sell the property.
- The total purchase price was \$68,500, a price that was not based on any advice or information on market value of the property.
- Mr. K was the sole director of the numbered company.
- At some date after September 1, 2005, Ms S surrendered possession of the property to Mr. K and Mr. K started doing renovations.
- Mr. K contacted Colleen Ann Walsh, a real estate associate, on or about September 27, 2005 about listing the property.
- Ms Walsh completed the Risk Reduction and Mortgage Fraud Awareness course just days before being contacted by Mr. K by phone.
- Mr. K wanted to list his property and provided all of the listing information, including the list price of \$132,000, to Ms Walsh by phone.
- Mr. K was not yet on title at this point.
- Ms Walsh had her assistant enter information provided by Mr. K onto a listing contract to send to Mr. K for signing.
- Ms Walsh understood Mr. K to be an investor in property.
- The contract was sent by fax to Mr. K and returned by fax with a signature on it.
- On the same day, Mr. K signed a document entitled "C/O Listing Broker" authorizing the brokerage to list the property 'in care of the brokerage'.
- This document was received by fax by Ms Walsh and identified the seller as Mr. K.
- Ms Walsh did not perform a comparative market value assessment for this property nor did she undertake any other assessment to determine appropriate value for marketing purposes.
- Ms Walsh did not inspect the property to confirm the condition of the property, measurements or the presence of upgrades or renovations.
- Information about the dimensions of the property were obtained by the assistant from a source unknown to Ms Walsh.
- Ms Walsh requested an assistant perform a title search on the property though Ms Walsh did not wait for the title search to be obtained before entering the information received from Mr. K on the MLS® system for the purpose of marketing the property.
- On or about October 4, 2005, the assistant obtained a copy of the title search that showed Ms S as the owner on title.
- Ms Walsh terminated the listing agreement without obtaining further information from Mr. K regarding his interest in the property or possession, nor did she contact Ms S to obtain her consent to marketing the property.
- Ms Walsh did not communicate with Mr. K during this period concerning the marketing of the property.

- On or about October 17, 2005, Ms S signed a Transfer of Land for the property to Mr. and Mrs. B.
- Also on October 17, 2005, Ms S's counsel, Mr. H, signed a caveat on her behalf claiming "an unpaid vendor's lien."
- On or about October 24, 2005, Ms Walsh's broker signed a Listing Contract Termination Agreement regarding the MLS® listing.
- On or about October 24, 2005, Ms S filed a vendor's caveat on title, to protect her interests arising from the purchase contract executed on September 20, 2005.
- On or about November 17, 2005, the Listing Contract Termination Agreement regarding the MLS® listing was returned to Ms Walsh by fax with signatures, purportedly those of Mr. K and a witness.
- This ended both Ms Walsh's and her brokerage's involvement in the property.
- The MLS® listing with the price shown as \$132,000 was online and active from approximately October 3, 2005 through to November 17, 2005, when it was removed.
- On November 29, 2005, Mr. and Mrs. B signed a mortgage agreement in the amount of \$106,000.
- On December 7, 2005, the Transfer of Title from Ms S to Mr. and Mrs. B was registered on title for the property. Consideration for the transfer was stated as \$70,000. The mortgage was registered on the subject property in the amount of \$106,000.
- On April 24, 2006, Capital Health deemed the property "Unfit for Human Habitation" and Mr. and Mrs. B were ordered to vacate the property.

Results: By way of a Consent Agreement, which was ratified by a RECA Hearing Panel, Ms Walsh was ordered to pay a fine of \$2,500 and costs of \$1,000, and was required to complete education within six months.

August 2009

JAY FEDDEMA, ASSOCIATE

LAMPAS HOLDINGS LTD. O/A RE/MAX RIVER CITY AT ALL MATERIAL TIMES AND CURRENTLY REGISTERED WITH ELITE OWNERSHIP GROUP LTD. O/A RE/MAX ELITE

Issues:

- Failed to act in a client's best interest [s.2(a) of the Code of Conduct, as it was then]
- Failed to verify that there was full disclosure of dual agency and failed to ensure there was dual agency consent in writing [s.3(b) of the Code of Conduct, as it was then]
- Participated in the creation of a contract, document or form of communication that he knew or ought to have known was false or misleading [s.4(d) of the Code of Conduct, as it was then]
- Participated in fraudulent or unlawful activities in connection with real estate [s.7(c) of the Code of Conduct, as it was then]

- Failed to provide all documentation or trade records to the broker [*Real Estate Act* Rules s.23(3), as it was then]

Facts:

- In the fall of 2003 Jay Feddema, a real estate associate, verbally evaluated some units in a condo conversion in Edmonton.
- The project manager for the conversion was Mr. K.
- Mr. K had a professional appraisal done for the properties.
- This appraisal was about \$10,000 more per unit than Mr. Feddema's evaluation.
- Mr. Feddema listed four of the units on MLS®, using the higher appraisals.
- Mr. K brought four buyers for the units and Mr. Feddema wrote contracts for the units.
- There were no dual agency consent forms signed for the units although Mr. Feddema was listed as representative for both buyer and seller.
- After the Offers to Purchase were written, the units were not taken off the MLS® listing for more than two weeks.
- The transactions did not go through Mr. Feddema's brokerage as Mr. K's lawyer did not accept an addendum the brokerage requested. The sales did not proceed through Mr. Feddema's brokerage and the listings expired on April 30, 2004.
- Mr. Feddema listed two more units in the complex in July 2004. Mr. K brought buyers to Mr. Feddema for the units and Mr. Feddema wrote Offers to Purchase for the units. There was no dual agency disclosure with the purchase documents.
- The closing date on the purchases was July 25, 2004.
- On July 26, 2004, the MLS® status on the two units was active.
- In early 2004, Mr. K requested a sample purchase contract and a sample highlight sheet from Mr. Feddema.
- Mr. Feddema instructed his assistant to give some old samples, from his prior brokerage, to Mr. K.
- Mr. K used these samples to create contracts for about 20 other properties at this and two other locations.
- Mr. K used the name of Mr. Feddema's prior brokerage on the contracts.
- Documents indicate the properties were part of a mortgage fraud scheme, with gift letters and straw buyers.
- Mr. Feddema stated he was not aware of these contracts and a witness who was also a straw buyer indicated he did not know Mr. Feddema.
- These sales were not processed through a brokerage and the buyers did not meet with Mr. Feddema.
- Mr. Feddema subsequently listed six units at two other properties of which Mr. K was manager.
- On one property, Mr. Feddema wrote an offer to purchase, and witnessed the buyer's initials.
- The buyer stated that the initials on parts of the contract were not hers, although she does acknowledge signing a contract amendment.
- Mr. K and the buyer's common-law spouse handled the transaction.

- The common-law spouse died suddenly and the transaction was cancelled without the buyer's consent.
- The buyer does not have a clear recollection of Mr. Feddema's role in that particular transaction.
- The mortgages for the various sales did not close when one of the banks involved noticed some irregularities and notified the mortgage broker.
- Mr. Feddema received \$2,000, which was processed through the brokerage as a referral.

Results: By way of a Consent Agreement, which was ratified by a RECA Hearing Panel, Mr. Feddema was suspended for a period of one month, ordered to pay a fine of \$3,500 and costs of \$2,000, and is required to complete education within six months.

GARY CHAMBERS, REAL ESTATE ASSOCIATE
CENTURY 21 POWER REALTY LTD.

Issues:

- Carried on conduct that was 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]
- Engaged 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]

Facts:

- Mr. Chambers uses the internet as part of his advertising strategy and has registered a web domain page that advertises his real estate practice.
- On or about September 1, 2007, a company (Company C) registered two website domain pages with the name of a competing real estate associate, Mr. B; www.mrb.ca and www.mrb.com.
- Mr. Chambers is one of two sole directors of Company C.
- During the investigation, Mr. Chambers acknowledged he had registered the two domain names through his company.
- Mr. B was unaware of Company C's registration of these website domain names.
- The laws of Canada and Alberta dealing with trade-marks and trade names prohibit persons from advertising their services in such a way so that confusion is or may be caused to the public confusing the services of one person or entity with that of another.
- On or about March 2, 2008, Mr. Chambers forwarded www.mrb.ca and www.mrb.com to his own website.
- As such, if someone typed-in either www.mrb.ca or www.mrb.com, he or she would automatically be re-directed or transferred to Mr. Chambers' own website.
- Mr. B was unaware of Mr. Chambers' forwarding.

- On or about March 7, 2008, a friend of Mr. B's was searching for Mr. B's real estate website and typed www.mrb.ca and www.mrb.com into a Web browser and was redirected to Mr. Chambers' website.
- On or about March 8, 2008, Mr. B was made aware of the forwarding and redirecting of these websites to Mr. Chambers' site.
- On or about March 11, 2008, Mr. Chambers ceased the redirecting of www.mrb.ca and www.mrb.com to his website.

Results: By way of a Consent Agreement, which was ratified by a RECA Hearing Panel, Mr. Chambers was ordered to pay a fine of \$3,000 and costs of \$500, and complete an educational course dealing with ethics within six months.

Ali Mehri, ASSOCIATE

Century 21 The Professionals Ltd.

Issues:

- Failure to provide true copies of the Offers to Purchase to the parties in a trade in real estate [s.27 of the *Real Estate Act* Rules, in force from October 1, 1999 to September 30, 2006]

Facts:

- Mr. Mehri was contacted by Mr. D about two properties listed for sale by another brokerage
- Mr. D contacted Mr. Mehri on behalf of Mr. C who was interested in purchasing the properties.
- Mr. Mehri met with Mr. D and Mr. C and during this meeting, Mr. C advised Mr. Mehri that he wanted to submit offers on both properties.
- Mr. Mehri wrote up an Offer to Purchase on Mr. C's behalf for each property.
- When this meeting concluded, Mr. Mehri did not provide copies of the Offers to Purchase to Mr. C.
- On the same day as the meeting, Mr. Mehri called Mr. L, the listing real estate associate, in order to see if the properties were still available for purchase.
- Mr. L advised Mr. Mehri that he had an offer that had been accepted by his clients and that they were waiting for the conditions to be removed and that there was also a back up offer that had been accepted in the event the first offer collapsed.
- Mr. Mehri advised Mr. L that he should call him in the event the offer collapsed as he (Mr. Mehri) had somebody who was interested in purchasing the properties and Mr. L agreed he would
- Mr. L maintains that Mr. Mehri never told him he had offers from clients, just that he had someone who was interested in the properties.
- Mr. Mehri maintains he did tell Mr. L he had offers but that Mr. L advised him his clients were no longer interested in looking at anymore offers.
- Copies of the Offers to Purchase prepared by Mr. Mehri on behalf of Mr. C were never submitted to Mr. L or to Mr. L's clients.

Results: By way of Consent Agreement, which was ratified by a RECA Hearing Panel, Mr. Mehri was ordered to a fine of \$500 and costs of \$200, and was ordered to complete an education course within six months.

APPEALS

July 2009

Vishwa Naidu, ASSOCIATE

921325 Alberta Ltd. o/a C-21 Platinum Realty and North Star Realty Corporation o/a Sutton Group-North Star Realty

Facts: As a result of a RECA investigation into Mr. Naidu's conduct as a real estate associate, Mr. Naidu had a disciplinary hearing before a RECA Hearing Panel with respect to 18 allegations of conduct deserving of sanction. By way of decision dated October 27, 2006, the Hearing Panel found Mr. Naidu's conduct to be deserving of sanction with respect to 14 of the 18 allegations. The sanction ordered by the Hearing Panel was:

- That Mr. Naidu pay a fine in the amount of \$20 000;
- That Mr. Naidu's authorization to trade in real estate be suspended for four years. Taking into consideration that Mr. Naidu had been unlicensed for one year at the time the Hearing Panel's decision was rendered, the suspension was reduced to three years with Mr. Naidu being able to re-apply for licensing on October 1, 2009;
- That Mr. Naidu pay costs of \$55,787.67 (these costs included the costs of the investigation, costs of legal services' time on the file, and costs of the hearing);
- That Mr. Naidu re-complete AREA's Real Estate Associates' Program in its entirety and that he retake and pass the provincial qualifying exam prior to becoming licensed to trade in real estate; and,
- That Mr. Naidu complete the Mortgage Fraud Awareness course prior to becoming licensed to trade in real estate.

Mr. Naidu appealed the Hearing Panel's findings of conduct deserving of sanction on the 14 allegations and appealed the Hearing Panel's decision on sanction to a RECA Appeal Panel.

Results: The Appeal Panel heard Mr. Naidu's appeal and it dismissed it on all grounds. The Appeal Panel determined that the initial Hearing Panel decision on conduct and sanction was reasonable. The Appeal Panel determined that no evidence was presented to support Mr. Naidu's belief that errors in law were made by the original Hearing Panel. The Appeal Panel determined the sanction imposed by the Hearing Panel was reasonable and upheld the original Hearing Panel orders. Additionally, the Appeal Panel ordered Mr. Naidu to pay \$10,000 in appeal costs.

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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Cheryl Schindel

Real estate boards outside of Edmonton and Calgary

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Cindy Dubray

Property management Sector

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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.

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