

REAL ESTATE COUNCIL OF ALBERTA
NOTICE OF ADMINISTRATIVE PENALTY

To: Alberta Property Management Solutions Inc
c/o Colleen Bruce, Broker
100 – 9914 Morrison Street
Fort McMurray, Alberta T9H 4A4

In accordance with section 83 and the Bylaws of the *Real Estate Act* (RSA 2000 c R-5, hereinafter the “**Act**”), the Executive Director of the Real Estate Council of Alberta (hereinafter “**RECA**”) has determined that Alberta Property Management Solutions Inc (hereinafter “the Brokerage”) has contravened section 17 of the *Act* and hereby assesses an Administrative Penalty in the amount of **\$5,000.00**. The evidence giving rise to the Executive Director’s decision is as follows:

Between November 6, 2008 and August 11, 2009, the Brokerage had been operating as a property management company trading in real estate as a real estate broker in the Province of Alberta without authorization.

On May 1, 2009, a RECA staff member contacted L.C. one of the directors of the Brokerage and explained to L.C. that the Brokerage would need an authorization in order to continue to perform property management activities. The RECA staff member also suggested L.C. to contact an information officer at RECA for information on how the Brokerage could become authorized to trade in real estate or how the clients of the Brokerage could be transfer to Sutton Group – Fort McMurray.

The Brokerage became authorized to trade in real estate on August 11, 2009. Subsequent to the Brokerage becoming authorized, the RECA staff member contacted L.C. L.C. stated that:

1. he was aware that the Brokerage had traded in real estate without authorization between November 6, 2008 and August 11, 2009 and the clients of the Brokerage were not protected by E and O insurance and the Assurance Fund;
2. he did not transfer the clients of the Brokerage to Sutton Group – Fort McMurray between May 1, 2009 and August 11, 2009 because L.C. tried to separate the Brokerage and Sutton Group – Fort McMurray and hoped to get a broker some time and also his wife was sick at that time; and

3. there were discussions between the directors to get a broker for the Brokerage, but no discussions on how to deal with the customers in the unlicensed company.

A review of the tenant directory of the Brokerage shows that the Brokerage had engaged in 48 property management trades and managed 37 properties in the Province of Alberta. A review of one of the residential property management contracts shows that the Brokerage charges the property owner 10% of gross rent as management fees and collected at least \$31,110.00 in management fees between November 6, 2008 and August 11, 2009.

The Executive Director is of the opinion that the above noted conduct is in violation of section 17 of the *Real Estate Act* which sets out that:

17 No person shall

- (a) trade in real estate as a real estate broker,
- (b) deal as a mortgage broker,
- (c) act as a real estate appraiser, or
- (d) advertise himself or herself as, or in any way hold himself or herself out as, a mortgage broker, real estate broker or real estate appraiser

unless that person holds the appropriate authorization for that purpose issued by the Council.

In accordance with section 83 of the Act and Part 4 of the Act's Bylaws, the Executive Director hereby assesses you an Administrative Penalty in the amount of **\$5,000.00** against you.

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

Aggravating Factors

- Between November 6, 2008 and August 11, 2009, the clients of the Brokerage were not protected by E and O insurance and the Assurance Fund;
- RECA had indicated to a director of the Brokerage that the Brokerage was trading in real estate while unauthorized. The directors of the Brokerage discussed RECA's concerns but it took over three months to become authorized; and
- Unauthorized activity has an effect on public confidence and harms the integrity of the industry.

Mitigating Factors

- The directors have been issued individual administrative penalties for their participation in the brokerage's unauthorized practice;
- No evidence of injury or damages to the Brokerage's clients has been uncovered at this time; and
- There is no prior history of discipline against the Brokerage.

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

This sum of **\$5,000.00** is payable to the Real Estate Council of Alberta within thirty (30) days of the date of issuance of this Notice of Administrative Penalty. If you fail to pay the amount set out in this notice, the Executive Director may commence legal action against you to recover the amount owing in respect of the Administrative Penalty as a debt due to the Real Estate Council of Alberta.

If you dispute this Notice of Administrative Penalty in accordance with s. 83.1 of the Act, you may appeal it to a Hearing Panel. You will be given a full opportunity consistent with procedural fairness and natural justice to present evidence before the Hearing Panel and make representations in relation to the contravention.

If you have any questions in regard to this Notice of Administrative Penalty, please contact Winnie Leung, Investigator, at the Real Estate Council of Alberta.

DATED this 28 day of January, 2011

REAL ESTATE COUNCIL OF ALBERTA

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