

**REAL ESTATE COUNCIL OF ALBERTA**  
**NOTICE OF ADMINISTRATIVE PENALTY**

To: **Gerard Brand**  
**Sovereign Mortgage Services**  
**503, 5920 Macleod Trail South**  
**Calgary, AB T2H 0K2**

In accordance with s. 39 and s. 83 and the Bylaws of the *Real Estate Act*, R.S.A. 2000 c. R-5 (the "**Act**"), the Executive Director of the Real Estate Council of Alberta has determined that there is sufficient evidence of conduct deserving of sanction in regard to you, Gerard Brand (hereinafter "**Mr. Brand**"), at all relevant times, mortgage associate, registered with TMG The Mortgage Group Alberta Ltd. o/a TMG (hereafter "**TMG**"), to assess an Administrative Penalty. The evidence giving rise to the Executive Director's decision is as follows:

In or around January 2008, Mr. Brand prepared a mortgage application on behalf of R.S. and A.S. (the "Mortgagees"). The transaction did not complete. The Mortgagees attempted a second mortgage application with Mr. Brand which also did not complete. The Mortgagees wanted to apply for a mortgage for a third time with Mr. Brand. Prior to applying for the third mortgage, Mr. Brand requested a fee for making the application, half of which he asked for up front. The Mortgagees paid \$2,000.00 directly to Mr. Brand and which Mr. Brand accepted.

Prior to receiving written confirmation from the lender that they would fund the mortgage, and prior to the confirmation being accepted by the borrower and provided to the borrower or the borrower's associate, Mr. Brand charged and collected a fee from the Mortgagees for assisting them in obtaining a mortgage from a lender.

The Executive Director is of the opinion that the above noted conduct is in violation of section 71(1) of the Rules made pursuant to the Act which sets out that:

- 71(1) Subject to section 71(2), a brokerage must not charge, collect or attempt to collect a fee from a person for assisting the person in obtaining a mortgage from a lender until the following conditions are met:
  - (a) the lender has provided a written confirmation to fund the mortgage, accepted by the borrower and the commitment has been provided to the borrower or the borrower's associate; and

- (b) the lender or the lender's agent has provided the person with an initial disclosure statement and at least two business days have passed since the initial disclosure statement was received by the person or the person has waived the time period for delivery in accordance with the *Fair Trading Act*.

In accordance with s. 39 and s. 83 of the Act and Part 4 of the Act's Bylaws, an Administrative Penalty in the amount of **\$1,500.00** has been assessed against you for this contravention.

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 offense in respect of those contraventions.

This sum of **\$1,500.00** 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 Victoria Woodworth-Lynas, Case Presenter, at the Real Estate Council of Alberta.

DATED this 11<sup>th</sup> day of June, 2010.

## **REAL ESTATE COUNCIL OF ALBERTA**

Per:

*Bob Myroniuk*  
Executive Director

Cc: Russell John Mendonca, Mortgage Broker  
TMG The Mortgage Group Alberta Ltd. o/a TMG

Cc: Peter Gerald Fairhead, Mortgage Broker  
Argentum Mortgage and Finance (Alberta) Corp.