

REAL ESTATE COUNCIL OF ALBERTA
NOTICE OF ADMINISTRATIVE PENALTY

**To: Jimmy Tan Minh Diep
iRealty Calgary Inc. o/a Re/Max iRealty Innovations
204 – 555 11 Avenue SW
Calgary, Alberta T2R 1P6**

In accordance with section 83 and the Bylaws of the *Real Estate Act* RSA 2000 c. R-5, (Act), the Executive Director of the Real Estate Council of Alberta (RECA) is of the opinion that you, Jimmy Tan Minh Diep (Mr. Diep), has contravened section 17 of the Act and hereby assesses an Administrative Penalty in the amount of **\$5,000**. The evidence giving rise to the Executive Director's decision is as follows.

On October 3, 2007 you were registered as a real estate associate to Unison Realty Group Ltd.

On October 24, 2007 Greenstreet Inc. was incorporated in Alberta with the directors noted as K.H. and yourself.

Between February 26, 2008 and June 16, 2009, either K.H. or you on behalf of Greenstreet Inc. entered into 35 property management agreements with a number of property owners. To summarize the terms of the agreement, Greenstreet Inc. services included advertising and obtaining suitable tenants, preparation of leases, supervise the move in and out of tenants, use its best efforts to arrange for performance of the owners obligations to all tenant, to pursue remedies on behalf of the owner in relation to breaches by the tenant, to collect all rents and other charges payable by the tenant, to supervise and arrange for any necessary repairs to the rental premises, hold funds in trust and disburse funds in accordance with the trust terms and provide a full accounting on a monthly basis of all activities to the property owner undertaken on their behalf. The agreement further provided that Greenstreet Inc. was entitled to a monthly compensation fee of 10% exclusive of GST for their services in addition to reimbursement of advertising and marketing costs and such other compensation as provided for within the agreement.

Between June 25, 2008 and June 26, 2009, either K.H. or yourself representing Greenstreet Inc., prepared and/or executed 41 residential tenancy agreements

between the property owner as landlord and various tenants in which Greenstreet was named as the agent acting on behalf of the property owner/landlord.

You failed to inform your registered broker at Unison Realty Group Ltd of your property management activities during the period you were registered to the brokerage.

On April 27, 2009 you were advised by RECA staff that your property management activities were in breach of the Real Estate Act and provided with your options to resolve this matter.

During the period of April 28 and August 13, 2009, as representative for Greenstreet Inc. you continued to conduct property management activities as set out in the agreements and entered into new management and residential tenancy agreements.

On August 13, 2009 you were advised by RECA staff that you were to cease all property management activities immediately and forward all trust funds to the property owners. RECA requested verification that this was done. You subsequently provided verification of the transfer to the property owner of all trust funds and notification to all tenants that this was done.

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 Bylaws, the Executive Director hereby assesses an Administrative Penalty in the amount of **\$5,000** against you.

The circumstances of this matter indicate the following aggravating and mitigating factors were considered:

Aggravating Factors

- You failed to inform his registered broker of the property management activities and failed to seek clarification from RECA regarding these activities.
- You continued to undertake property management activities for more than 3 months after you had been advised by RECA you were not authorized to do so.
- When dealing with an industry professional engaged in property management activities, the public has an expectation the individual will also be knowledgeable of and in compliance with other legislation such as the Residential Tenancies Act (RTA) applicable to these activities. A review of the records notes practices that are in conflict with provisions or offences under the RTA. These are: the agreement requires either the landlord or the tenant to give notice in a fixed term tenancy (RTA does not require notice by either party in a fixed term tenancy); no notice of landlord (offence); and inspection reports do not contain the prescribed statements (offence) thereby prohibiting deductions to the security deposit for damages to the premises (offence if deductions are made for damages). In addition, tenants with pets were required to pay a pet deposit in addition to a security deposit equal to one month's rent. In practice, the pet deposit was also treated as a refundable deposit resulting in the two deposits exceeding one tenancy months' rent contrary to the RTA (offence).

Mitigating Factors

- You were licensed as a real estate associate for less than 6 months when you engaged in unauthorized property management activities.
- You have not been the subject of any previous discipline or advisory notes.
- There have been no complaints made to RECA by any of the property owners or any of the tenants nor is there any indication of trust account violations.
- You have ultimately acknowledged your responsibility in engaging in unlicensed property management activities and that you failed to inform your registered broker of these activities.

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 **\$5000** is payable to RECA 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 RECA.

If you dispute this Notice of Administrative Penalty in accordance with section 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 Dian Kuchtey, Professional Conduct Review Officer at RECA.

DATED this 10th day of December, 2011

REAL ESTATE COUNCIL OF ALBERTA

Per: *Charles Stevenson*, for
Bob Myroniuk
Executive Director