

REAL ESTATE COUNCIL OF ALBERTA
NOTICE OF ADMINISTRATIVE PENALTY

To: Theodore Kenneth Francois
Calgary Independent Appraisers
3907 3A St, NE, Suite 208
Calgary, AB T2E 6S7

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 Theodore Kenneth Francois (Mr. Francois), 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 September 26, 2010, RECA provided you with notice that your real estate appraiser authorization would expire effective September 30, 2010.

You stated you do not recall receiving this notification, but cannot be certain. You acknowledged receiving RECA's renewal package in previous years, and may have recalled past email notification.

On September 30, 2010, your real estate appraiser authorization expired, at which time you were no longer authorized to carry out the activities of a real estate appraiser.

Between October 1, 2010, and June 5, 2011, you continued to carry out activities of a real estate appraiser without the required authorization.

On June 6, 2011, you were advised by your client, Nationwide Appraisal Services, you were not authorized by RECA to carry out the activities of a real estate appraiser. You stated this was your first indication you were not authorized.

On June 6, 2011, you contacted RECA to verify the status of your authorization, and were informed you were unauthorized as a real estate appraiser.

On June 6, 2011, RECA received a letter of good standing from AIC.

June 7, 2011, RECA received a completed real estate appraiser/candidate licence application, along with an original sworn statement outlining your activities for the unauthorized period of October 1, 2010 to June 6, 2011.

Your authorization was renewed by RECA June 8, 2011.

Between October 1, 2010 and June 2, 2011, you completed 186 appraisals for which you received remuneration in the amount of \$38,000.

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 have been an authorized real estate appraiser since 2004, and ought to have been aware of licensing requirements
- You completed 186 appraisals during the unauthorized period for which you received \$38,000 in remuneration
- Unauthorized activity has an effect on public confidence, places consumers at risk, and harms the integrity of the industry.

Mitigating Factors

- You have no prior discipline history
- You accepted responsibility for your unauthorized activity and ceased the activity upon becoming aware of it

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** 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 Carla Sasley, Investigator, at RECA.

DATED this 24th day of November, 2011.

REAL ESTATE COUNCIL OF ALBERTA

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