

REAL ESTATE COUNCIL OF ALBERTA
NOTICE OF ADMINISTRATIVE PENALTY

**To: Mr. Richard Horb, Associate
Re/Max Real Estate
102, 4245 97 St
Edmonton, AB T6E 5Y7**

In accordance with section 83 and the Bylaws of the *Real Estate Act* R.S.A. 2000 c. R-5, (Act), the Executive Director of the Real Estate Council of Alberta (RECA) has determined that there is sufficient evidence of conduct deserving of sanction in regard to you, Richard James Horb (Mr. Horb), at all relevant times a real estate associate, registered with Re/Max Real Estate (Re/Max), presently registered with Re/Max, to assess an Administrative Penalty. The evidence giving rise to the Executive Director's decision is as follows.

On or about July 23, 2010, you listed the property located at 19 Annette Cr, St. Albert, AB, for the sellers, F.L and C.L (the L's)

On or about September 7, 2010, you created a Residential Real Estate Purchase Contract on behalf of a buyer, C.G., and presented an unconditional offer to the L's, which was accepted by them.

The Purchase Contract detailed:

- Section 2.2: \$10,000 initial deposit
- Section 3.1: All Deposits shall be delivered in trust to Re/Max Real Estate
- Section 4.1: Possession date: September 24, 2010

Information provided by you indicates C.G. provided you an initial deposit cheque, in the amount of \$10,000, upon drafting the offer.

You advised C.G. the cheque needed to be certified before you could accept it due to a quick closing date. You did not inform the L's of your broker's direction to have the cheque certified or the difficulties you encountered in locating C.G. so as to fulfill this requirement.

On or about September 11, 2010, you indicate you contacted C.G. to collect the certified cheque. At that time, C.G. advised she would not be providing a deposit, nor would she complete the contract. At no time prior to C.G.'s decision

had you informed the L's that the initial deposit had not been collected in accordance with the terms of the contract.

As C.G. failed to complete the contract as agreed to the L's, in accordance with the terms of listing contract, the L's requested the \$10,000 deposit be given to them as their entitlement for breach of contract. It was at this time that the L's became aware that the funds had not been received.

The Executive Director is of the opinion that the above noted conduct is in violation of section 41(d) of the Rules made pursuant to the Act which sets out that:

41 Industry members must:

(d) fulfill their fiduciary obligations to their clients

In accordance with section 39 and section 83 of the Act and Part 4 of the Act's Bylaws, an Administrative Penalty in the amount of **\$2,500** has been assessed against you for this contravention.

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

Aggravating Factors

- You have been a licensed real estate associate since September, 1997, and ought to have been aware of your requirements relating to the transaction.
- You did not act in the best interests of the client having not informed the L's of C.G.'s failure to abide by the terms of trust

Mitigating Factors

- You have suffered a financial loss as a result of this conduct
- You followed the directions of your broker
- The sellers were fully compensated having received \$10,000 from your errors and omission's provider
- The conduct is singular and does not represent a pattern

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 **\$2,500** 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 16th day of January, 2012.

REAL ESTATE COUNCIL OF ALBERTA

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

cc: Pat Rudiger, Broker
Re/Max Real Estate