

REAL ESTATE COUNCIL OF ALBERTA
NOTICE OF ADMINISTRATIVE PENALTY

To: **Barry Munro, real estate broker**
921325 Alberta Limited o/a Century 21 Platinum Realty
5620 104 Street
Edmonton AB T6H 2K2

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, Barry Munro (hereinafter “**Mr. Munro**”), at all relevant times, real estate broker, registered with 921325 Alberta Limited o/a Century 21 Platinum Realty (hereafter “**Century 21 Platinum**”), to assess an Administrative Penalty. The evidence giving rise to the Executive Director’s decision is as follows:

On or about April 16, 2007, a company (“Company A”) made a conditional offer to purchase a commercial property located in Edmonton from another company (“Company B”). The offer from Company A was accepted by Company B. On or about May 25, 2007, Company A waived its conditions. Between May and November 2007, disputes arose between Company A and Company B relating to the purchase of the property.

As of November 2007, Mr. Munro became aware that the purchase of the property by Company A from Company B was not going to complete and that the companies were each claiming entitlement to deposit money paid by Company A. The deposit money was being held in trust with Century 21 Platinum. The purchase contract entered into by Company A and Company B included provisions for the handling of deposits where there was a dispute as to entitlement. It stated:

- 3.7 If there is a dispute between the Seller and the Buyer as to entitlement to the Deposits then:
- (a) the brokerage holding the Deposits shall review the circumstances, determine entitlement and pay the money to the party who is entitled to the Deposit;
 - (b) if no reasonable conclusion can be made in regard to (a) above, the brokerage shall notify the parties to the Contract in writing and shall pay the money into a lawyer’s trust account;

In a letter dated March 13, 2008, Mr. Munro wrote to the lawyers representing Company A and Company B stating that he could not clearly determine entitlement of the deposit being held in trust. Therefore, he notified the lawyers

that he was paying the deposit held in trust into a lawyer's trust account. Mr. Munro was aware of the dispute with respect to entitlement of deposit money as of November 2007; however he failed to disburse the money to a lawyer's trust account until March 14, 2008.

The Executive Director is of the opinion that the above noted conduct is in violation of section 25(1)(d) of the Act which sets out that:

25(1) An industry member who is required by the rules to keep and operate a trust account shall

(d) disburse money received or held in trust in respect of a dealing or trade in the business of the industry member only in accordance with the rules and with the terms of the trust governing the use of that money.

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, or Flora Fok, Legal Services Administrator, at the Real Estate Council of Alberta.

DATED this 5th day of November, 2010.

REAL ESTATE COUNCIL OF ALBERTA

Per:

Bob Myroniuk
Executive Director