



overview

consultation revising the rules

In self-regulation – like in traffic, sport, and games – rules serve an important purpose. They protect the safety of participants, create a level playing field, and keep things fair.

As we approach the tenth anniversary of self-regulation in Alberta, the Real Estate Council has undertaken a review of the *Real Estate Act* Rules to ensure they continue to meet the needs of industry members and protect the public interest.

The Real Estate Council of Alberta is considering changes which will:

1. clarify existing rules
2. reorganize the rules into requirements for all industry members and standards specific to each industry sector
3. include some of the key recommendations of the Agency Task Force of the Canadian Regulators Group
4. address emerging issues

The full text of the proposed Rules may be downloaded at www.reca.ca. The Real Estate Council invites your comments by 5 p.m. on February 28, 2006. The purpose of this consultation is to draw your attention to key changes which would have a significant effect on current practice as well as seek your views on the proposed changes.

KEY CHANGE

agency agreements and obligations

How industry members understand, approach, and explain different representation relationships affects buyers and sellers directly. In Alberta, approximately 40% of errors and omissions claims involve some aspect of agency. In order to form successful relationships, both industry members and buyers/sellers must clearly understand their rights, responsibilities, and representation options.

Although the proposed rules related to agency would require some changes to current industry practices, they would make clear the obligations that already exist under common law and set standards consistent with consumer expectations.

The rules below represent the first of two phases planned for implementing changes to agency. The practice of dual agency would continue to be permitted under these proposed rules, but only with meaningful disclosure to the buyer and seller and their timely, informed consent. In 2007, transaction brokerage and designated agency will replace dual agency.

rule	description
1	Definitions added for the terms: buyer, concurrent representation, conflict of interest, customer, dual agency, exclusive buyer brokerage agreement, exclusive seller brokerage agreement, property management, purchase, sale, seller, and sole agency.
43	Written service agreements containing specified information are required to establish client relationships.
44	Obligations to protect confidential information are outlined.
48	Agency relationships can be established expressly or implicitly and may be triggered by the provision of advice on which the client relies or the receipt of confidential information from a client.
55	Industry members must disclose in writing the nature of the services they will provide, their representation of any other person(s) in the trade or anticipated trade, any conflict of interest, and any other facts which may influence a person's decision to be represented by them. Open house showings, small talk, and answering questions do not alone trigger the duty of disclosure.
57	Basic obligations of a seller's sole agent.
58	Basic obligations of a buyer's sole agent.
59	A brokerage may represent both a seller and a buyer if they enter into a written dual agency with respect to a property. A brokerage may also represent either the buyer or seller as a client and <ol style="list-style-type: none"> a) treat the other party as a customer b) refer the other party to another brokerage
60	A buyer or seller may forgo agency representation and elect to sign a customer status acknowledgement. Brokerages may offer customers services.

council members

- BEV ANDRE (*Chair*)
real estate boards outside of Edmonton and Calgary
- ANDREW CHOPKO
real estate appraisers
- ALLAN DREDGE
Edmonton Real Estate Board
- NORM JENSEN
real estate boards outside of Edmonton and Calgary
- KEVAN LADNER
real estate brokers trading in commercial real estate
- RICHARD PARKER
public member appointed by the minister of Alberta Government Services
- LYNN A. PATRICK (*Past Chair*)
public member appointed by members of Council
- JACK A. PEAT
Building Owners & Managers Association of both Edmonton and Calgary, Real Estate Institute of Canada and the Institute of Real Estate Management
- PAT RUDIGER
real estate brokers trading in residential real estate
- ERIC STEWART (*Vice-chair*)
Alberta Mortgage Brokers Association
- CHARLOTTE SUTHERLAND
industry members who are not members of the Alberta Real Estate Association
- TED ZAHARKO
Calgary Real Estate Board

IN THIS ISSUE

- revising the rules** 1-2, 4
- message from council** 2
- strangers at the door** 3
- real estate trivia** 3
- RECA mandatory professional development policies** 3
- case summaries** 5 - 6

Executive Director
BOB MYRONIUK

Director of Audit and Investigations
JOSEPH FERNANDEZ

Director of Corporate Services
GERALD SACCARDO

Director of Industry Standards
KIRK BACON

Communications Coordinator
KATHLEEN WALSH

REAL ESTATE COUNCIL
OF ALBERTA
2424 - 4 Street SW,
Suite 340
Calgary, AB
T2S 2T4

Phone (403) 228-2954
Toll-free 1-888-425-2754
Fax (403) 228-3065
www.reca.ca

The Regulator is published
three times a year by the
Real Estate Council of Alberta
and distributed to licensed
brokerages in Alberta.

Please forward your
comments and suggestions
for feature articles to
communications@reca.ca.

referral fees must be disclosed

Industry members are often asked to recommend other professionals or service companies. Their advice is sought because of their special expertise, and consumers may expect to receive a fair and unbiased opinion or recommendation – one which would not in any way be prejudiced by a referral fee arrangement. In the interest of protecting the reputation of industry professionals as independent and reliable advisors, some jurisdictions have prohibited the payment and receipt of referral fees.

However, with proper safeguards referral fees can work. If – at the outset – industry members make clear the possibility that they will receive referral fees from participants on the other side of the arrangement, clients and customers are unlikely to object. When these fees are not disclosed in advance and a consumer later discovers the industry member received payment, they may feel a sense of betrayal.

The proposed rules recognize that consumers have a fundamental right to know the costs of industry members' services and how an industry member will be compensated or remunerated, including any referral fees.



proposed rule	description
45	Industry members must disclose receipt or payment of referral fees in advance and in writing.

failure to cooperate

Effective self-regulation of any group relies upon the support and cooperation of its members. Under the *Real Estate Act*, industry members are obliged to cooperate fully with audits and investigations. The proposed Rules outline the different licensing consequences those who do not cooperate with the Real Estate Council of Alberta or its panels may face.

rule	description
14(1)	A person who fails to pay any outstanding penalties, fines or costs or to comply with any terms or conditions imposed by the executive director, a hearing panel, appeal panel or court of law is not eligible to be licensed.
33(1)(c)	The executive director may refuse to issue a licence to an applicant who has failed to cooperate with the Act or Rules.
35(1)	If a RECA investigator or auditor is denied or restricted access to brokerage records or prevented from carrying out his duties under the Act, the executive director may suspend or cancel the brokerage's licence.
38	Industry members must comply with orders issued under the <i>Real Estate Act</i> . Failure to do so may result in licence suspension.



Bev Andre, Chair

message from council

Lynn's contributions

It has been a privilege to work with Lynn Patrick, RECA's outgoing chair, throughout the past year, and I would like to begin my term as chair by thanking him. As a public member of Council, Lynn has unfailingly focused on protecting the public interest. The far-sightedness, determination

to combat mortgage fraud, and commitment to principled self-regulation that characterized his leadership will have a lasting impact on Council.

phasing in changes to agency

At the forefront of its initiatives, the Real Estate Council will be implementing key recommendations of the Agency Task Force of the Canadian Regulators Group. Council has approved a phased implementation approach in order to address concerns raised by industry members in ten consultation meetings organized by AREA last year. In the coming year, revisions to the *Real Estate Act* Rules will state clearly agents' responsibilities to their clients. Buyers and sellers rely upon the advice of their agents to make life-changing decisions, and they must have full confidence in those representatives. I believe this initiative will lead to long-term improvements in consumer knowledge and satisfaction and ultimately benefit the industry.

responsible regulation

I am very honoured to have the opportunity to serve as chair in the year that Alberta celebrates ten years of self-regulation. If we look back for a moment, our achievements in raising the level of professionalism in the industry, establishing effective complaint investigation and disciplinary processes, and earning an international reputation for responsible self-regulation should give us all a sense of accomplishment. Yet in this milestone year it is perhaps even more important that we look forward and lay the groundwork to succeed in the next decade. The proposed Rules are intended to better address the needs of our evolving industries. I encourage you to review the changes and to take the opportunity to provide your feedback. I assure you that, together with my colleagues on Council, I will give your comments every consideration in fulfilling our mandate of improving the industry and protecting public interest.

personal trades and deals

When trading in real estate or dealing with mortgages on their own behalf, industry members must disclose:

- any interest – direct or indirect – that they or any other industry member has in the transaction
- they are licensed under the *Real Estate Act*
- the name of the brokerage with which they are registered
- any information that could materially affect the transaction
- in writing in advance to the parties to the trades or deal complete details of any negotiations for its trade to another person

Industry members must also disclose personal transactions to their brokers. This disclosure is because brokers' reputations may be affected by these activities.

proposed rule	description
53, 62, 69, 75	Industry members must: disclose in writing to the parties to the trade or deal the name of the brokerage with which they are registered AND notify their brokers of personal trades in real estate or deals in mortgages.

strangers at the door – preparing sellers for property access

Perhaps one of the key tools used by industry members to successfully market real estate is to have the property show to its best advantage. Listing agents often spend considerable time discussing this essential subject with sellers. Some even provide how-to brochures or recommend maid services or home staging experts to ensure the property is well prepared for showings.

Equally important may be to ensure the seller is well prepared for showings. Property showings are a routine event for the industry member; however, many sellers are sensitive about having strangers through their home. After all, people consider their home a sanctuary, home sweet home, a refuge from the rest of the world...then suddenly, the rest of the world and their real estate agents parade through!

A listing agent's open communication with the seller about how access to the listed property might affect them is important. A cautious seller may want the listing agent present for all showings and other appointments such as home inspections. A seller may wish to restrict access for various reasons, such as a shift-worker's sleep schedule or small children at home. While complying with the seller's wishes, an industry member should also advise the seller about the potential consequences: restricted access might reduce showings or make it difficult for the potential buyer to meet conditions in a timely fashion. Further, the seller should be advised that when a listing agent attends a home inspection and learns of previously unknown material latent defects, a legal obligation arises which requires the seller, and thereby the agent, to disclose material latent defects.

Once an offer is obtained and the property is sold, sellers may breathe a sigh of relief that the invasion of their privacy is over. But is it really? When a condition in a purchase contract requires property access, the industry member should discuss it with the seller before the contract is accepted. Some conditions require that the property be accessed, such as an appraisal for a financing condition, home inspection, parental or spousal approval, renovation estimates, engineering reports, water well flow rate testing, and so on.

Again, these are commonplace situations for an industry member, but an unprepared seller might be troubled by more strangers through their home. To prepare the client, the industry member becomes responsible for communicating what these access requirements will entail. Some examples include:

- a home inspection usually takes much more time than a showing, the property will be closely scrutinized, and the buyers may or may not be present
- an inspection to locate survey pins may require the owner to prepare gates and/or fences to protect livestock
- an inspection by a renovator may require moving household articles to access a certain area

It is possible that the local real estate board bylaws may conflict with client's wishes. For example, home inspectors or appraisers with board membership status may have a key safe number to access MLS® listed properties. In such circumstances, the listing agent remains responsible for obtaining information

about the satisfaction of the condition and the seller's consent before permitting access by such persons. While industry members who are also real estate board members should abide by the board guidelines, they must also keep in mind that one of their duties to their clients is to comply with the client's lawful instructions. An industry member who cannot comply with the client's needs and instructions or cannot take the time required to communicate fully with a client might consider declining to act for that client.

practice tip

Property access should not occur without the seller's knowledge and consent.

case study

Agent Jenny represented sellers as a listing agent in a residential real estate transaction which was conditional to a home inspection. The home inspection appointment was consented to by the sellers on the understanding that Agent Jenny would be in attendance at the sellers' property with the home inspector throughout the home inspection. Unbeknownst to Agent Jenny, the buyers' agent, Agent Beth, also scheduled an appointment for a furnace inspector to attend the property at the same time as the home inspector, without informing or obtaining consent from the sellers or the sellers' agent.

On the day the home inspection took place, Agent Jenny learned the buyers had also scheduled an appraiser, a cleaning estimator, and a closet organizer consultant to attend at the property at the same time as the home inspector. Agent Jenny did not inform the sellers of these additional attendances in advance and their consent was not obtained. Further, Agent Jenny did not advise the sellers after the fact.

For a period of time while these inspectors and other persons carried out their various tasks, Agent Jenny left the sellers' property in their control. The sellers arrived home while these people were still at the property and Agent Jenny was nowhere to be found. The sellers were very displeased and complained to RECA that Agent Jenny had permitted unauthorized access and control of the sellers' property to various people, for various purposes which were not permitted by the seller.

If the matter were referred to a RECA hearing panel, the hearing panel might find that Agent Jenny's conduct was conduct deserving of sanction in that she permitted unauthorized access and control of a client's property to third parties and the hearing panel could order Agent Jenny be reprimanded, fined, ordered to pay the costs of the hearing, etc.

MANDATORY PROFESSIONAL DEVELOPMENT POLICIES UNDER REVIEW

The Real Estate Council of Alberta is reviewing its professional development policies for all industry members to promote consistency in the treatment of RECA licensees and to ensure they meet the objective of improving professional practice and protecting the public interest.

RECA's current policy requires real estate licensees to complete one mandatory course and a minimum of 18 course credits every two years. While Council strongly believes in professional development as a means of increasing industry members competence, knowledge, and skill, it is carefully considering what role the regulator should play in directing individuals' professional development choices. It is also considering what role real estate boards and industry associations should play in the professional development of their members.

The Real Estate Council is currently weighing the benefit of changing its policies to require real estate licensees to complete one mandatory course each year and eliminating the 18-credit requirement. The annual mandatory course would focus specifically on regulatory requirements, legislative changes, legal issues, risk reduction, and emerging industry issues (e.g. mortgage fraud, privacy, grow-ops, etc.).

NOTE: The course approval process will be suspended until Council's review is complete. Please be assured that if the existing requirement is maintained, any professional development completed since October 1, 2005 will be fully credited. Until the review is complete, you are encouraged to complete any courses which might address your individual professional development needs with the understanding that if the 18-credit requirement is eliminated, you will not receive or require any RECA credit for courses taken since October 2005 except the mandatory course (to be announced in 2006).



RENT TRIVIA

1. What is the average rent for a one-bedroom apartment in Whitehorse?
2. What is the average apartment vacancy rate in Canadian cities?
3. Which city in Canada has the lowest vacancy rate?
4. Which city in Alberta has the highest average rent?
5. Which city in Canada has the highest average rent?

Answers: 1. \$645 per month 2. 2.7% (Oct 2004) 3. Victoria, BC (0.6%) 4. Fort McMurray (\$2,095 per month for a one-bedroom) 5. Toronto (\$1,052 per month for a two-bedroom)

rule clarifications

proposed rule	topic	clarification
10	Termination of authorization	Termination of an industry member's licence occurs when the individual is no longer eligible or fails to renew registration for a period of 36 months.
11, 12	Withdrawal from industry	An industry member can withdraw from the industry by operation of the Rules, voluntarily, or by section 54 application approved by Council. A section 54 withdrawal is a lifetime ban.
13	Registered business office	Brokerages, appraisers, and candidates must maintain a registered business office in Alberta at which they conduct their business and maintain records and which is their address for service. If a real estate or mortgage brokerage maintains more than one office in Alberta, they must designate one as the registered business office and it must be managed by the broker.
14(3)	Cancellation	The time frame that must pass before a person is eligible to be licensed again after a cancellation under Part 3 of the Act is increased from 12 to 36 months, subject to an alternative order of a hearing panel, appeal panel, or court.
15	Bankruptcy	Bankruptcy does not circumvent licensing eligibility requirements to RECA (i.e. still required to pay any outstanding fees, fines, costs, penalties, etc.).
37	Brokerage ceasing to carry on business	The process for a brokerage to wind-down its business and withdraw from the industry is outlined.
40	Notification to RECA	Industry members must notify RECA in writing of: <ul style="list-style-type: none"> • changes to their licensing information (e.g. a name change due to marriage, address change, new e-mail address) • discipline by any board or association • criminal proceedings or convictions (except traffic offences resulting in monetary fines only) • bankruptcy or receivership proceedings (their own or those of any business they participate in as a director or officer) • judgments rendered against them in relation to a trade in real estate, dealing in mortgages, fraud, or breach of trust (or against a business they own or participate in as a director or officer)
41, 42	Industry member responsibilities and prohibitions	These sections incorporate the existing Code of Conduct.
50(d), 66(d)	Payment of fees to unlicensed persons	Payment of fees to unlicensed persons for referrals and leads is prohibited.
53, 69	Maintenance of documents	The brokerage is responsible for maintaining original documents.
54(2), 70(2)	Inducements	Inducements can only be offered on behalf of and through the brokerage.
89	Notification of trust shortages	Brokerages must notify RECA of trust fund shortages and take corrective action.
94, 105	Record keeping	Records outlined are to be kept and available at a business office in Alberta or the City of Lloydminster. Each trade or potential trade must be identified using a sequential code system corresponding to the trust ledger and containing specific information.

proposed rules 51(h), 83, 84, 85

electronic banking

Brokerages may use electronic banking (e.g. bank machines or the Internet) when they meet requirements with respect to deposit receipts, written and printed records, and using ABM cards.

proposed rule 82

electronic records

Brokerages may convert and store records electronically when they follow the requirements for creating, retaining, and deleting these records.

proposed rule 13

registered business office

Brokerages, appraisers, and candidates must maintain a registered business office in Alberta: where they conduct business, have control of the premises, maintain records, and can be accessed by consumers. The registered business address is their address of service. Brokerages that maintain more than one office must designate one as their registered business office to be managed by the broker (additional offices may be managed by the broker or a delegate).

prohibitions upheld

proposed rules 50(d) and 66(d)

Payment of referral fees to unlicensed persons will continue to be prohibited.

proposed rules 54(3), 70(3)

Cash incentives will continue to be prohibited.

NEW LICENSING REQUIREMENT

current rule 11(2)(f)

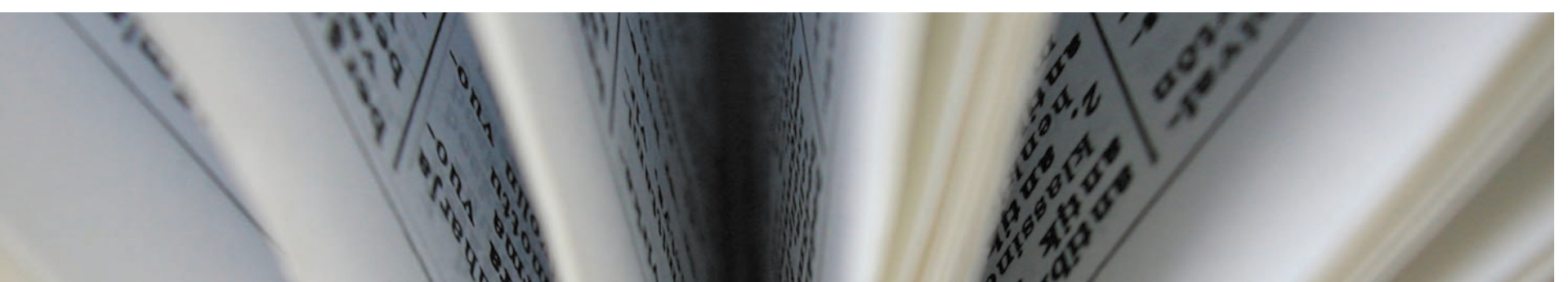
proposed rule 19(1) and 27

criminal record report and fingerprints

Note: This requirement has been approved by Council as a policy and will come into effect on March 1, 2006.

The verification of persons' true identity is a core security issue. From a regulatory perspective, the Real Estate Council of Alberta has a responsibility to be certain of a person's true identity prior to granting an authorization. A criminal record check through fingerprint comparison is the most secure check an organization can undertake.

In order to effectively protect the public interest, the Real Estate Council will require new applicants to submit identity documents, a criminal record report, and a record of their fingerprints. Although existence of a criminal record will not necessarily prevent an applicant from obtaining a licence, more rigorous preliminary screening will enable the Real Estate Council of Alberta to evaluate more closely each candidate's personal suitability.



Case summaries are published in accordance with section 55 of the *Real Estate Act*. For full versions of the disciplinary decisions summarized below, visit www.reca.ca > *Complaint & Outcomes* > *Disciplinary Outcomes* > *Decisions*. Decisions are publicized to enhance the transparency of RECA's disciplinary process and to assure consumers that there is an effective framework in place to deal with breaches of the *Real Estate Act*. To obtain further information about RECA's policies and procedures, please call 1-888-425-2754.

administrative penalties

Total issued since September 2005 (some penalties issued involved more than one breach):

- 1 breach regarding failure to fulfill fiduciary duties
- 1 breach regarding unauthorized activity
- 1 breach regarding brokerage responsibilities (payment of commissions)

disciplinary actions

AUGUST 2005

Deborah Hansen and Doyle Hansen, agents
Simco Developments Ltd. o/a Simco Realty Services, Brokerage

ISSUE(S) Reckless or intentional misrepresentation, failure to provide competent service, failure to act in client's best interest

FACTS Deborah and Doyle Hansen entered into a listing agreement with a client on or about December 14, 2002, but the Hansens did not submit the listing agreement to their brokerage until December 23, 2002. They also did not submit the listing agreement to the Red Deer and District Real Estate Board until January 10, 2003, notwithstanding that the RDREB's rules require all listing agreements be filed within five days of being signed by the seller. Mr. Doyle then changed the date of the listing agreement to January 4, 2003. The sellers were not informed of the change to the listing agreement, they did not consent to it and they did not initial the amended listing agreement.

RESULTS The Hearing Panel accepted Mr. and Mrs. Hansen's Admission of Conduct Deserving of Sanction and ordered that Mr. and Mrs. Hansen jointly and severally pay a fine of \$1,000 and costs of \$1,250.

OCTOBER 2005

Guy Henderson, broker
White Star Realty Ltd. o/a Realty Executives White Star

ISSUE(S) Broker responsibilities, reviewing monthly trust reconciliations within 30 days

FACTS One of White Star Realty's agents, Thomas Hodgkinson, submitted a written request to the Calgary Real Estate Board on January 30, 2004, to have 20 active White Star Realty listings transferred from his name to another of the brokerage's agents (his daughter) and one listing to another of the brokerage's agents. On that same day, Mr. Hodgkinson was added back on to several of the White Star Realty listings as secondary agent to his daughter; his daughter's MLS® input access code was used. In a February 13, 2004 interview, Mr. Henderson acknowledged that he did not know of the transfer of listings until February 12, 2004, when Mr. Hodgkinson terminated his registration with White Star Realty. On or about February 13, 2004, Mr. Henderson advised an employee of

the brokerage to remove Mr. Hodgkinson's name from all of the brokerage's listings, but he failed to follow-up to ensure this was done.

Mr. Hodgkinson remained as secondary listing agent on approximately 10 White Star Realty listings until about February 24, 2004, despite not being licensed to trade in real estate at the time. Further to the above, on February 13, 2003, Mr. Henderson failed to ensure that vendors of White Star Realty listings, with Mr. Hodgkinson as the listing agent, were informed that Mr. Hodgkinson was no longer registered with White Star Realty and/or no longer their listing agent.

As broker for White Star Realty, Mr. Henderson delegated the responsibility of preparing monthly bank reconciliations for the brokerage's trust account to an employee of the brokerage. Mr. Henderson failed to review or discuss the bank reconciliations with this employee, he never asked to see the bank reconciliations, and he failed to approve the bank reconciliations by signing and dating the same.

Mr. Henderson failed to ensure compliance with legislation and did not review any of the brokerage trust reconciliations. Mr. Henderson did not sign any of the three bank reconciliations collected by RECA in relation to the trust account for White Star Realty, between September and November 2003. Furthermore, Mr. Henderson did not delegate this responsibility to any other registered individual associated with the brokerage.

RESULTS The Hearing Panel found Mr. Henderson's conduct to be deserving of sanction, in that:

- Mr. Henderson failed to ensure the business of the brokerage was carried out competently and in accordance with legislation, contravening Rule 21(1)(e).
- Mr. Henderson failed to ensure the required trust accounts and trust account records were maintained in accordance with legislation, contravening Rule 21(1)(g).
- Mr. Henderson failed to sign monthly trust account reconciliations within 30 days, contravening Rule 38(3).

The Hearing Panel ordered Mr. Henderson to pay a fine of \$2,500, costs of \$11,594.14 and complete three modules of the Real Estate Broker's course. Furthermore, the Hearing Panel ordered that Mr. Henderson's suspension as a broker is to remain in effect until all Hearing Panel orders are fulfilled.

Note: This matter is currently pending appeal.

OCTOBER 2005

Steven Butt, agent
Westhills Realty Ltd. o/a Sutton Group Westhills Realty

ISSUE(S) Associate broker and agent responsibilities (failure to provide trade records), obtaining commissions, trust account requirements

FACTS Mr. Butt represented a numbered company in the purchase of a commercial property in June 1999. In or about May 2000, Mr. Butt entered into an oral agreement with the numbered company to perform property management services on behalf of the numbered company for that same property. Mr. Butt continued to provide property management services until April 2002 and he received remuneration for doing so. These services were not provided through Mr. Butt's brokerage, Mr. Butt's broker was not

made aware of them and did not receive records of the property management services Mr. Butt was carrying out. Furthermore, Mr. Butt and the numbered company did not have a service agreement regarding the use of any monies received in trust by Mr. Butt for the numbered company's benefit.

RESULTS The Hearing Panel accepted Mr. Butt's Admission of Conduct Deserving of Sanction and ordered that Mr. Butt pay a fine of \$3,000, costs of \$3,500 and complete an educational requirement.

NOVEMBER 2005

Shailend Sharma, agent
Calgary Independent Realty Ltd. o/a C.I.R.

ISSUE(S) Failure to act fairly and honestly with non-clients, reckless or intentional misrepresentations, creation of a document or contract that is false or misleading, failure to render a competent service, associate broker or agent responsibilities

FACTS Mr. Sharma entered into listing contracts to sell four properties, each of which had a listing price that was unreasonably high. Mr. Sharma prepared feature sheets for some or all of the properties containing the inflated prices and submitted them to the MLS® system. In doing so, Mr. Sharma may have inadvertently become involved in a fraudulent scheme to place high-ratio mortgages on the above mentioned property. The information communicated to the public via MLS® was inaccurate and misleading. Further to the above, Mr. Sharma did not provide all documentation or trade records to his broker with regard to one of the properties, and he failed to keep his broker informed of the activities he was performing as an agent on behalf of the brokerage.

RESULTS The Hearing Panel accepted Mr. Sharma's Admission of Conduct Deserving of Sanction and ordered that Mr. Sharma pay a fine of \$3,500, costs of \$5,607.68 and complete an educational requirement.

NOVEMBER 2005

Lesley Fleming, agent
Tempo Real Estate Ltd. o/a Royal LePage Benchmark, brokerage

ISSUE(S) Failure to provide competent service, creation of a document or contract that is false or misleading, failure to ensure role in transaction was clear, failure to disclose all relevant information to a client, failure to act in accordance with a client's lawful instructions, disclosure of a client's confidential information

FACTS On or about March 17, 2003, Ms. Fleming entered into a 90-day listing agreement to sell an acreage. The listing agreement expired and the vendors signed a further listing agreement with Ms. Fleming. Ms. Fleming did not sign the second listing agreement nor did anyone else from her brokerage. While acting as an agent for the vendors and prospective buyers, Ms. Fleming prepared offers to purchase from two couples (Buyers A and Buyers B), separately, to purchase the aforementioned acreage. On or about October 5, 2003, Ms. Fleming presented the offers of Buyers A and Buyers B. The vendors accepted Buyers B's offer, which was subject to an eight-hour clause to waive conditions in the event another offer was made on the property. On or about October 8, 2003, Ms. Fleming prepared a second offer on behalf of Buyers A

and presented said offer to the vendors. Buyers B were informed of Buyers A's second offer and they waived all their conditions further to the eight-hour clause. Buyers B ultimately purchased the property, but the offer Ms. Fleming prepared on their behalf contained errors. Namely, the offer to purchase indicated that the sale of Buyers B's home was a condition of the contract, but "Condition Day" was left blank, and, there was an inconsistency between clause 4 and clause 6 of the offer to purchase that could have forced Buyers B to waive both the buyer's sale and financing condition notwithstanding that Buyers B had not yet received financing approval.

In acting as an agent for all parties, Ms. Fleming failed to explain the conflict of interest to any of the parties and failed to obtain informed consent from any one or more of the vendors, Buyers A or Buyers B. Ms. Fleming also disclosed specific terms and conditions of Buyers B's offer to Buyers A without the permission of Buyers B. And finally, under the terms of Buyers B's offer, Buyers B were obliged to deliver an additional \$18,000 deposit immediately upon waiving conditions. The additional deposit was not provided to Ms. Fleming until October 17, 2003, notwithstanding that the offer to purchase was not amended to allow for delivery of the deposit later than October 8, 2003, and Ms. Fleming did not inform the vendors that the additional deposit was delivered late.

RESULTS The Hearing Panel accepted Ms. Fleming's Admission of Conduct Deserving of Sanction and ordered that Ms. Fleming pay a fine of \$3,500, costs of \$6,352.52 and complete an educational requirement.

NOVEMBER 2005

Duane Jones, broker
Point McKay Realty Ltd., brokerage

ISSUE(S) Reckless or intentional misrepresentation; failure to act fairly, honestly and with integrity when dealing with non-clients; failure to provide competent service

FACTS Mr. Jones entered into a listing agreement to sell a condominium unit in Riverside Towers. The unit was described on a listing put onto the Calgary Real Estate Board's MLS® system and in a marketing brochure as being 79.0 square metres in area. This measurement was based on architectural drawings. The condominium's survey plan filed with Land Titles indicated that the unit's measurement was 70.0 square metres. Mr. Jones failed to disclose this information to any prospective purchasers or their representatives. The unit was eventually sold to Buyer A on or about July 6, 2001 for \$110,000. In or about December 2003, Buyer A listed the condominium unit for sale with another industry member, who measured the unit as 70.0 square metres. This was the first time that Buyer A became aware that the unit was 70.0 square metres not 79.0 square metres. Buyer A listed the property for \$122,500 in March 2004 and the property was sold on or about June 1, 2004 for \$110,000.

In addition, Mr. Jones submitted other listings for condominium units at Riverside Towers to CREB's MLS® system under which the measurement of each unit's area was based upon architectural drawings, as opposed to more accurate measurements described in the survey plan filed with Land Titles.

RESULTS The Hearing Panel found Mr. Jones'

conduct to be deserving of sanction, in that:

- Mr. Jones made knowing or reckless misrepresentations in the course of advertising or marketing the condominium unit, contravening section 4(a) of the Code of Conduct.
- Mr. Jones failed to act fairly, honestly and with integrity when dealing with non-clients, contravening section 7(b) of the Code of Conduct.
- Mr. Jones failed to maintain a state of competency on a continuing basis in all areas in which he renders services, contravening section 6(a) of the Code of Conduct.

The Hearing Panel ordered Mr. Jones to pay a fine of \$1,000, costs of \$1,000 and complete an educational requirement.

Note: This matter is currently pending appeal.



NOVEMBER 2005

Joginder Brar, agent
Twin Oaks Real Estate 1993 Inc. o/a Re/Max House of Real Estate
And,
Signet Real Estate Ltd. o/a Signet Commercial

ISSUE(S) Failure to cooperate

FACTS Numerous times in October 2003, October 2004, November 2004 and December 2004, Mr. Brar failed to provide information to RECA that was requested by RECA investigators. Requests for information were provided in writing and by telephone to Mr. Brar and the information requested included but was not limited to cellular telephone records, personal bank records and signed waivers of confidentiality for Revenue Canada.

RESULTS The Hearing Panel found Mr. Brar's conduct to be deserving of sanction, in that:

- Mr. Brar failed to cooperate with an individual conducting an investigation, contravening section 38(4) of the *Real Estate Act*.
- Mr. Brar did not cooperate fully with, and did not provide any information requested to, any representative of the Real Estate Council of Alberta carrying out their responsibilities under the legislation,

contravening section 7(d) of the Code of Conduct.

The Hearing Panel ordered Mr. Brar to pay a fine of \$5,000, costs of \$6,488.25 and re-take and pass the Real Estate Agent's Program before any application for an authorization to trade in real estate be approved. Furthermore, the Hearing Panel ordered that the Executive Director not approve any future application from Mr. Brar for an authorization to trade in real estate until he has cooperated with the original investigation by RECA to the satisfaction of the executive director.

appeal to court of queen's bench

NOVEMBER 2005

Salvatore Aiello, agent
Sutton Group Canwest

ISSUES ON APPEAL Errors of law and fact, denial of natural justice and fairness, excessive sanction

FACTS In a January 13, 2005 decision of a RECA Hearing Panel, Mr. Aiello's conduct was found to be conduct deserving of sanction and Mr. Aiello's authorization was suspended for one year. He was ordered to pay a fine of \$10,000 and costs of \$15,571.72 and to complete an educational requirement. In a July 18, 2005 decision of a RECA Appeal Panel, Mr. Aiello's appeal was dismissed.

Mr. Aiello appealed to the Court of Queen's Bench. (For details of the issues before the Hearing and Appeal Panels, see the May 2005 Regulator.)

RESULTS The Court of Queen's Bench found that the RECA Hearing and Appeal Panels had breached the rules of natural justice and fairness and set aside the decisions of those panels.

withdrawals from the industry (section 54)

Sukesh Dave, agent
The Real Estate Company

On September 14, 2005, Sukesh Dave applied to the Real Estate Council of Alberta to withdraw from industry membership in accordance with Section 54 of the *Real Estate Act*. At the time of the application, Mr. Dave was the subject of a RECA investigation.

Mr. Dave requested to withdraw for life from industry membership. The Real Estate Council approved Mr. Dave's application, and the lifetime ban on industry membership became effective immediately.

Azmat Siddique, agent
Impact Real Estate Group Ltd. o/a Residential One Real Estate

On November 16, 2005, Azmat Siddique applied to the Real Estate Council of Alberta to withdraw from industry membership in accordance with Section 54 of the *Real Estate Act*. At the time of the application, Mr. Siddique was the subject of a serious RECA investigation.

Mr. Siddique requested to withdraw for life from industry membership. The Real Estate Council approved Mr. Siddique's application, and the lifetime ban on industry membership became effective immediately.