

REAL ESTATE COUNCIL OF ALBERTA

NOTICE OF ADMINISTRATIVE PENALTY

To: Tom Head
US Investment Realty Inc
1017N Central AVE
Phoenix, AZ 85004

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, Carrick Sears (Mr. Sears), contravened section 17 of the Act and hereby assesses an Administrative Penalty in the amount of **\$5,000.00**. The evidence giving rise to the Executive Director's decision is as follows:

You are a real estate agent licensed in the State of Arizona and employed with US Investment Realty. Additionally, you are a team member in Team Gerchick. You are not authorized to trade in real estate as a real estate broker in Alberta.

December 31, 2009, RECA received information that Team Gerchick would be attending and presenting information concerning real estate opportunities in Arizona at a booth in the Calgary Home Expo Show between January 15 and January 17, 2010 as well as a seminar on January 18, 2010 at the Calgary Marriott. A review of all information received indicated that Team Gerchick would be carrying out activities in Alberta for which they were not authorized. RECA sent Linda Gerchick, the team leader for Team Gerchick, two (2) Letters of Warning detailing that the team was not authorized to trade in real estate in the Province of Alberta and informing Team Gerchick to not trade as a real estate broker without authorization in the Province of Alberta.

After receiving the first warning letter, Linda Gerchick contacted a RECA staff member and stated that any trades in real estate associate would be conducted by a real estate associate who has authority to trade in real estate in the Province of Alberta. A RECA staff member attended the booth maintained by Team Gerchick at Calgary Home Expo Show and the seminar at the Calgary Marriott. You and other members of Team Gerchick solicited members of the public to purchase properties in Arizona and all promotional materials were advertised under Team Gerchick and no signage at the booth or at the seminar identifying that authorized associate was presenting at the booth or the seminar.

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 *Act's* Bylaws, the Executive Director hereby assesses an Administrative Penalty in the amount of **\$5,000.00** against you.

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

Aggravating Factors

- You are a licensed and practicing real estate agent in the State of Arizona and ought to have been aware of other jurisdictions licensing requirements.
- RECA provided Team Gerchick with multiple clear oral and written warnings of the authorization requirements and resulting consequences for unauthorized trading in real estate as a real estate broker.
- Unauthorized activity has an effect on public confidence, places consumers at risk and harms the integrity of the industry.
- You and/or Team Gerchick received remuneration as a result of the unauthorized activities.
- You and Team Gerchick continued to market properties to Canadian citizens and to trade in real estate as a real estate broker without authorization in other Canadian jurisdictions

Mitigating Factors

- At this time RECA has not received any complaints from residents from the Province of Alberta regarding your services as a real estate broker.

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 **\$5,000.00** 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 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 Carla Sasley, Investigator, at the RECA.

DATED this 8th day of June, 2011.

REAL ESTATE COUNCIL OF ALBERTA

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

cc: Robin King, Manager, Development Services Audit & Investigation
Arizona Department of Real Estate

Joseph Elia, Designated Broker
US Investment Realty Inc