

REAL ESTATE COUNCIL OF ALBERTA
NOTICE OF ADMINISTRATIVE PENALTY

To: **Darrel Borbely, real estate associate broker**
416212 Alberta Ltd. o/a Re/Max Real Estate-Lethbridge
516 6 Street S
Lethbridge, AB T1J 2E1

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, Darrel Borbely (hereinafter "**Mr. Borbely**"), at all relevant times, real estate broker, registered with 1286176 Alberta Ltd. o/a Re/Max Bridge City Realty (hereafter "**Re/Max Bridge City**"), currently real estate associate broker registered with 416212 Alberta Ltd. o/a Re/Max Real Estate-Lethbridge, to assess an Administrative Penalty. The evidence giving rise to the Executive Director's decision is as follows:

On or about January 19, 2008, E.D. and N.D. (the "Sellers") entered into a Residential Real Estate Seller Brokerage Agreement (Listing Contract) with Re/Max Bridge City with K.T. as the authorized representative of the brokerage. The Listing Contract provided for payment of alternate compensation to the brokerage in the following instance, pursuant to clause 5.2 of the Contract:

- (a) If a Purchase Contract is signed but the Buyer defaults and the Deposits are forfeited, in which case the amount payable will be the lesser of the Remuneration that would have been payable had the sale been completed or 50% of the forfeited Deposits. IT shall be payable upon the forfeiture of Deposits; or...

On or about May 13, 2008, L.B. and H.C. (the "Buyers") made a conditional offer to purchase the Sellers' property. On or about May 16, 2008, the Buyers waived all conditions. The possession date was July 2, 2008.

On or about July 1, 2008, the city of Lethbridge had experienced a severe rain storm which caused some flooding in the Sellers' property. On July 2, 2008, the Buyers refused to take possession of the property. The sale eventually collapsed.

The Sellers entered into a Listing Contract with another brokerage on or about July 29, 2008, following the collapse of the sale and the expiry of the Listing Contract with Re/Max Bridge City.

On or about August 14, 2008, K.T. filed a caveat on the Sellers' property with the approval of Mr. Borbely. The caveat stated that K.T. of Re/Max Bridge City "...claims an interest in the within described lands as an Unpaid listing agent..."

The Listing Contract provided an agreement on alternate remuneration where the Buyer defaults on a purchase and deposits are forfeited. Mr. Borbely failed to point out the remuneration provision to the associate contained in the Listing Contract and/or Mr. Borbely failed to follow the clause in the Listing Contract that stipulated what remuneration was owed to the brokerage where the Buyer defaults on the purchase and instead, he authorized K.T. to file a caveat on the Sellers' property, causing delay for the Sellers in selling their property.

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

- 41 Industry members must:
 - (b) provide competent service;

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 30th day of July, 2010.

REAL ESTATE COUNCIL OF ALBERTA

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

Cc: A.F., broker
416212 Alberta Ltd. o/a Re/Max Real Estate-Lethbridge