

REAL ESTATE COUNCIL OF ALBERTA
NOTICE OF ADMINISTRATIVE PENALTY

To: Hubert Wellington Burgess, Broker
Associated Business Group (International) Inc.
1905, 10180 101 St
Edmonton, AB T5J 3S4

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 Hubert Wellington Burgess (Mr. Burgess), has contravened section 17 of the Act and hereby assesses an Administrative Penalty in the amount of **\$10,000**. The evidence giving rise to the Executive Director's decision is as follows.

On or around September 8, 2010, you commenced the process of renewing both your mortgage broker registration and the brokerage licence due to expire September 30, 2010.

Information indicates between September 8, 2010, and September 29, 2010, you communicated with RECA in relation to the renewal process, and were made aware of any outstanding information which was required in order to complete the renewals.

September 30, 2010, your authorization expired. At this time you were aware that you were no longer authorized to deal in mortgages in Alberta.

Between October 1, 2010, and February 28, 2011, you communicated with RECA and were provided direction on how to complete the registration and licensing process. February 28, 2011 RECA was in receipt of a completed broker registration and brokerage licence applications.

It has been determined that during the period of October 1, 2010 to March 1, 2011 you continued to deal as a mortgage broker without the appropriate authorization issued by Council. Additionally, you confirm that during the relevant period you received \$15,000 in remuneration related to a deal in mortgages and received the remainder of commissions owed - \$95,000 – upon completion of the deal.

It was further determined that during the unauthorized period, you maintained your brokerage website www.abg.ca and advertised to the public in your capacity as a mortgage broker; holding yourself out as a person who was authorized for that purpose.

On March 1, 2011, your authorization as a mortgage broker was renewed.

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 Bylaws, the Executive Director hereby assesses an Administrative Penalty in the amount of **\$10,000** against you.

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

Aggravating Factors

- You have been an authorized mortgage broker since February, 1997, and ought to have been aware of RECA's licensing requirements.
- You take no responsibility for the conduct.
- You continued to carry on activities of a mortgage broker even though RECA advised you of outstanding requirements in order to renew your authorization and the authorization of your brokerage.
- You received remuneration as a result of unauthorized activity.
- Unauthorized activity has an effect on public confidence, places consumers at risk and harms the integrity of the industry.
- There is a need for deterrence of unauthorized activity in the industry.

Mitigating Factors

- At this time RECA has not received any complaints from residents in the province of Alberta regarding your services as a mortgage 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 **\$10,000** 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, Professional Conduct Review Officer, at RECA.

DATED this 30th day of January, 2012.

REAL ESTATE COUNCIL OF ALBERTA

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