

REAL ESTATE COUNCIL OF ALBERTA
NOTICE OF ADMINISTRATIVE PENALTY

To: Leonard Clarke, Broker
Sutton Group – Fort McMurray
12 – 9914 Morrison Street
Fort McMurray, Alberta T9H 4A4

In accordance with section 83 and the Bylaws of the *Real Estate Act* (RSA 2000 c R-5, hereinafter the “**Act**”), the Executive Director of the Real Estate Council of Alberta (hereinafter “**RECA**”) is of the opinion that you, Leonard Clarke (hereinafter “**Mr. Clarke**”), contravened section 42(b) of the Rules made pursuant to the *Real Estate Act* and hereby assesses an Administrative Penalty in the amount of **\$1,500.00**. The evidence giving rise to the Executive Director’s decision is as follows:

At all relevant times you were a director of Alberta Property Management Solutions Inc (APMS) and a broker of 1139529 Alberta Ltd operating as Sutton Group – Fort McMurray (“Sutton Group – Fort McMurray”).

Between November 6, 2008 and August 11, 2009, APMS had been operating as a property management company trading in real estate as a real estate broker in the Province of Alberta without authorization.

On May 1, 2009, a RECA staff member contacted Mr. Clarke, one of the directors of APMS and explained to Mr. Clarke that APMS required a real estate broker authorization in order to conduct property management activities. The RECA staff member also suggested Mr. Clarke to contact an information officer at RECA for information on how APMS could become authorized or how APMS’s clients could be transferred to Sutton Group – Fort McMurray.

APMS became authorized to trade in real estate as a real estate broker on August 11, 2009. Subsequent to APMS becoming authorized, the RECA staff member contacted Mr. Clarke. Mr. Clarke stated that:

1. he was aware that APMS had traded in real estate as a real estate broker without authorization between November 6, 2008 and August 11, 2009 and the clients of APMS were not protected by E and O insurance and the Assurance Fund;

2. he did not transfer the clients of APMS to Sutton Group – Fort McMurray between May 1, 2009 and August 11, 2009 because Mr. Clarke tried to separate APMS and Sutton Group – Fort McMurray and hoped to get a broker some time and also his wife was sick at that time; and
3. there were discussions between the directors to get a broker for APMS, but no discussions on how to deal with the customers in the unlicensed company.

A review of the tenant directory of APMS shows that APMS had engaged in 48 property management trades and managed 37 properties in the Province of Alberta and a review of one of the residential property management contracts shows that APMS charges the property owner 10% of gross rent as management fees and collected at least \$31,110.00 in revenue between November 6, 2008 and August 11, 2009.

The Executive Director is of the opinion that the above noted conduct is in violation of section 42(b) of the *Real Estate Act* Rules which sets out that:

42 Industry members must not:

- (b) participate in fraudulent or unlawful activities in connection with the provision of services or in any dealings

In accordance with section 83 of the Act and Part 4 of the Act's Bylaws, the Executive Director hereby assesses you an Administrative Penalty in the amount of **\$1500.00** against you.

In determining the amounts outlined herein, the following aggravating and mitigating factors were considered:

Aggravating Factors

- Between November 6, 2008 and August 11, 2009, the clients of APMS were not protected by E and O insurance and the Assurance Fund;
- RECA had indicated to APMS was trading in real estate as a real estate broker while unauthorized. You and the other shareholders discussed RECA's concerns but it took APMS over three months to become authorized;
- Unauthorized activity has an effect on public confidence and harms the integrity of the industry; and
- You have been authorized since September 18, 1997 as an industry member and knew or ought to have known about the authorization requirements.

Mitigating Factors

- APMS became authorized to trade in real estate as a real estate broker on August 11, 2010;
- APMS has been issued an Administrative Penalty for trading in real estate as a real estate broker while unauthorized; and
- You have no prior history of discipline.

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 **\$1500.00** 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 Winnie Leung, Investigator, at the Real Estate Council of Alberta.

DATED this 28 day of January, 2011

REAL ESTATE COUNCIL OF ALBERTA

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