

REAL ESTATE COUNCIL OF ALBERTA
NOTICE OF ADMINISTRATIVE PENALTY

To: Keith Andrew Fraser
1 Rose Cres
Red Deer, AB T4N 4C4

In accordance with section 83 and the Bylaws of the *Real Estate Act* R.S.A. 2000 c. R-5, (Act), the Executive Director of the Real Estate Council of Alberta (RECA) has determined that there is sufficient evidence of conduct deserving of sanction in regard to you, Keith Fraser (Mr. Fraser), at all relevant times a real estate associate, registered with Coldwell Banker-Ontrack Realty (Coldwell Banker), presently registered with Worth Metro Realty, to assess an Administrative Penalty. The evidence giving rise to the Executive Director's decision is as follows.

On or around fall, 2008, you met with Mr. and Mrs. P. (the P's) to evaluate their home which they wanted to list once the house they were building was near completion.

At that time, you entered into an agreement with the P's whereby you offered to purchase their house if it did not sell by the time their new possession date was near. You did not document this guaranteed sale agreement in writing nor did you advise your broker about it.

February 28, 2009, the P's signed a Residential Real Estate Seller Brokerage Agreement for the property located at 4 McKinley Cres. The term was March 2, 2009 to August 31, 2009; the list price was \$314,900. At the time this service agreement was entered into you and the P's were under the understanding that the guaranteed sales agreement was still in effect.

On or about early June, 2009, the P's newly built home was nearing completion and their current home still was not sold. At no point during the listing period did you offer to buy the P's home as you had agreed to under the guaranteed sales agreement.

On or about June 26, 2009, the P's home sold with a possession date of July 8, 2009.

You did not fulfill your guaranteed sale agreement with the P's, and consequently, expenses were incurred by them due to a later possession date on their existing house.

The Executive Director is of the opinion that the above noted conduct is in violation of 42(a) of the Rules made pursuant to the Act which sets out that:

42 Industry members must not:

(a) Make representations or carry on conduct that is reckless or intentional and that misleads or deceives any person or is likely to do so;

In accordance with section 39 and section 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.

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

Aggravating Factors

- The sellers of the property were placed under great stress and incurred carrying costs
- These events undermine public trust in the real estate profession
- You have been a licensed real estate associate since June, 2004, and your brokerage had a policy prohibiting guaranteed sales agreement

Mitigating Factors

- You waived \$6,290.00 in commissions to compensate the sellers
- The sellers recouped expenses incurred
- You have no previous disciplinary history
- You accepted responsibility and have cooperated with the investigation
- Administrative Penalties have been issued for other components of related conduct

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 **\$1,500.00** 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 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, Investigator, at RECA.

DATED this 22nd day of September, 2011.

REAL ESTATE COUNCIL OF ALBERTA

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

cc: Tammy King, Broker
Worth Metro Realty

Lynn richardon, Broker
Coldwell Banker- Ontrack Realty