

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 Andrew Fraser (Mr. Fraser), at all relevant times a real estate associate registered with Coldwell Banker-Ontrack Realty (Coldwell), 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 oral agreement with the P's whereby if they listed the property with you, 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.
- no trust account was opened in any financial institution in which you deposited money payable under a guaranteed sale agreement.
- no money was deposited into any bank account representing a minimum of 5% of the total amount that may be payable under the guaranteed sale agreement

Section 20 of the Act states:

20(1) In this section, "guaranteed sale agreement" means an agreement in writing under which an industry member or another person on behalf of or to the benefit of an industry member undertakes to pay to the seller of real estate within a fixed or determinable amount of money in respect of that seller's real estate.

(2) An industry member who enters into a guaranteed sale agreement or has another person enter into a guaranteed sale agreement on behalf of or to the benefit of that industry member shall maintain a separate trust account in a bank, loan corporation, trust corporation, credit union or treasury branch in which money payable under this section must be deposited.

(3) When a guaranteed sale agreement is entered into by an industry member or other person on behalf of or to the benefit of an industry member, that industry member shall deposit into the trust account maintained under subsection (2) not less than 5% of the total amount that may be payable under the guaranteed sale agreement.

The Executive Director is of the opinion that the above noted conduct is in violation of section 19 of the Act which sets out that:

19 Except in accordance with section 20, no industry member shall make a representation to a seller of real estate that the industry member or another person on the industry member's behalf will pay to the seller a fixed or determinable amount of money within a fixed or determinable period of time.

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 **\$3,000.00** has been assessed against you for this contravention.

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

Aggravating Factors

- You were aware the brokerage did not offer guaranteed sales agreements
- The P's were placed at risk as the terms of the guaranteed sale were not in writing and 5% of the purchase price was not deposited into a trust account to be disbursed in accordance with the terms of trust set out by the Act
- You failed to honour the 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 **\$3,000.00** 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 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: Lynn Richardson, Broker
Coldwell Banker- Ontrack Realty

Tammy King, Broker
Worth Metro Realty