

REAL ESTATE COUNCIL OF ALBERTA
NOTICE OF ADMINISTRATIVE PENALTY

To: **Robert Graham Ogden, Real Estate Associate**
Re/Max Accord
2852 Calgary Trail South
Edmonton AB T6J 6V7

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, Graham Ogden (hereinafter "**Mr. Ogden**"), at all relevant times, real estate associate, registered with 1216973 Alberta Ltd. o/a MacDonald Realty S.W. Edmonton (hereafter "**MacDonald Realty**"), currently real estate associate with 1140456 Alberta Ltd. o/a Re/Max Accord, to assess an Administrative Penalty. The evidence giving rise to the Executive Director's decision is as follows:

On or about April 4, 2008, A.J. and B.J. (the "**Sellers**") entered into a Residential MLS Listing Contract Exclusive Seller Brokerage Agreement with MacDonald Realty with Graham Ogden as the associate authorized to represent the brokerage. On or about June 7, 2008, the Sellers received an unconditional offer to purchase from Z.K. and T.K. (the "**Buyers**"). The Residential Real Estate Purchase Contract provided for an initial deposit of \$50,000. Clause 3.1 of the contract stated:

3.1 All Deposits shall be delivered in trust to MacDonald Realty 3 days after acceptance.

No deposit was ever received by the Sellers, the Seller's lawyer or by MacDonald Realty. The Sellers were not advised that the deposit was not received until June 19, 2008 when contacted by their lawyer. Mr. Ogden spoke with the Sellers shortly after the Sellers spoke with their lawyer and confirmed that the deposit had not been paid. Mr. Ogden had not disclosed to the Sellers that the deposit had not been received as per the purchase contract anytime before June 19, 2008. The sale eventually collapsed as no monies were ever received from the Buyers.

The Executive Director is of the opinion that the above noted conduct is in violation of section 57(k) of the Rules made pursuant to the Act which sets out that:

- 57 The basic obligations of an industry member who is in a sole agency relationship with a seller are:
- (k) to disclose, in a timely manner, to the seller all relevant facts affecting the transaction known to the industry member

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 15th day of July, 2010.

REAL ESTATE COUNCIL OF ALBERTA

Per:

Bob Myroniuk
Executive Director

Cc: Phillip Harvey, Broker
Re/Max Accord