

REAL ESTATE COUNCIL OF ALBERTA

NOTICE OF ADMINISTRATIVE PENALTY

**To: Frank Earl Rhode
496 Rembar Rd
Qualicum Beach, B.C.
V9K 2L4**

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 Frank Earl Rhode (Mr. Rhode), has contravened section 17 of the Act and hereby assesses an Administrative Penalty in the amount of **\$12,000.00**. The evidence giving rise to the Executive Director's decision is as follows:

On September 30, 2009, you did not renew your authorization as a real estate appraiser.

Sometime prior to October 2009 or shortly thereafter you were requested by Mark Beckett (Beckett), the owner of Rhodeside Appraisals, to sign as a reviewing appraiser for a candidate in Alberta, Neeta Sachar, who carried on the activities of a real estate appraiser in Alberta for the period of October 1, 2009 to August 31, 2010.

On or around September or October, 2009, you state you telephoned RECA several times to get clarification regarding authorization requirements for an out of province reviewer. RECA has no records of your calls. Furthermore, you affirm you took the position that an authorization was not required and assumed the role of reviewer.

You continued to review and sign off on appraisals completed by Sachar in relation to Alberta properties between October 1, 2009 and July 25, 2010.

On or about July 26, 2010, you contacted RECA to inquire about authorization requirements for an out of province reviewer as you were asked by Beckett to continue supervising Sachar for the 2010/2011 year.

On or about July 27, 2010, you sent an email to RECA asking what was required to reinstate your authorization.

On or about July 29, 2010, RECA responded to your inquiry and confirmed the need for a reviewing appraiser to be authorized.

You did not cease your review and sign off activities after receiving the July 29, 2010 information, and continued to sign appraisals completed by Sachar until August 31, 2010. Between July 29, 2010 and August 30, 2010 you reviewed and signed off on a total of 14 appraisals.

You state you aware that to re-instate your real estate appraiser authorization you were required to complete a mortgage fraud course yet felt the course was irrelevant. Further, since RECA's year end was September 30, you felt it was late in the year at that there was no point to become authorized.

During the period of October 1, 2009 to August 31, 2010, you reviewed and signed off on 257 appraisals completed for Alberta properties, for which you received remuneration.

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 **\$12,000** against you.

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

Aggravating Factors

- You have been authorized as an appraiser since October, 2004 and are well versed in the real estate appraisal industry and authorization requirements as you were a member of RECA's Real Estate Appraisers' Advisory Committee. You state you were not aware whether or not an authorization was required yet you continued carry out the activities of a real estate appraiser between October 1, 2009 and July 29, 2010.

- The conduct was not an isolated incidence, but was ongoing.
- You confirm you were aware of all authorization requirements on or about July 29, 2010, yet you did not cease your activities in Alberta and continued to act as a real estate appraiser until August 30, 2010.
- Unauthorized activity has an effect on public confidence, and harms the integrity of the industry.
- You received remuneration as a result of the unauthorized activities.
- 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 from the Province of Alberta regarding your services as an appraiser.
- You have ceased all appraisal activity in Alberta.

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 **\$12,000** 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, Investigator, at RECA.

DATED this 15th day of November, 2011.

REAL ESTATE COUNCIL OF ALBERTA

Per: Joseph Fernandez, for
Bob Myroniuk
Executive Director