



Private and Confidential

March 21, 2011

**Letter of Reprimand Pursuant to section 39 of the
*Real Estate Act***

In accordance with section 39 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, [(“Industry Member”)], at all material times, a real estate associate registered with [(“the Brokerage”)], to issue a letter of reprimand. The evidence giving rise to the Executive Director’s decision is as follows:

On or around June, 2006, you represented S.H. and K.H. (The H’s), as Buyers for the property located at 11 Strathlea Green SW, Calgary, AB. The sellers were C.S. a licensed real estate associate, and M. C. The selling price was \$1,150,000.

The H’s were concerned the listing price was about \$200,000 too high. You did not recommend to them options to resolve their purchase price concerns such as obtaining a real estate appraisal.

On October 26, 2006, the H’s obtained an appraisal on their own, and found the property to be valued at \$970,000 as at June 28, 2006.

The purchase contract was subject to a home inspection condition where the buyer has a valid reason not to waive the home inspection condition where the “*property inspection identifies defects in the Property that are not acceptable to the buyer*”. The home inspection condition identified missing flashing over the oval window and some small penetrations on the south wall of the home. It was later determined these conditions could allow moisture to enter the building envelope and cause damage.

The H’s discussed the inspection with you to see if this was enough of a concern not to waive conditions. You advised them that it was not. The H’s acted on your advice and waived the inspection condition.

After the purchase of the property, the H’s were advised by two lawyers with whom they spoke, the inspection concern was enough not to waive conditions, and believed they were provided incorrect and misleading information by you. The H’s also contacted the home inspector who further advised this issue has the potential to be a financial burden in the near future.

Indication gathered indicates no recommendation was made to the H's at any time to seek independent legal advice regarding the waiver of conditions.

Information provided to RECA details you spoke to a certified property inspector only after receiving the complaint by the H's.

The Executive Director believes that this conduct is in contravention of sections 2(a) and 6 of the Code of Conduct as was in effect at the time.

- 2 Industry members must fulfill their fiduciary duties to their clients. This includes the following:
 - (a) An industry member must act in the client's best interests.
- 6 An industry member must render competent service.

On October 1, 2006 the Code of Code was repealed and the Rules pursuant to the Act were amended. Section 58 (i) and 58 (k) of the Rules made pursuant to the *Real Estate Act* set out that:

- 58 The basic obligations of an industry member who is in a sole agency relationship with a buyer are to:
 - (i) take reasonable steps to discover relevant facts pertaining to any property for which the buyer is considering making an offer;
 - (k) advise the buyer to obtain expert advice on matters of importance to the buyer;

The Executive Director believes that this is conduct deserving of sanction but also believes this matter can be dealt with by way of this Letter of Reprimand.

If you dispute this Letter of Reprimand, in accordance with section 40.1(2) 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 Letter of Reprimand, please contact Carla Sasley, investigator, at the Real Estate Council of Alberta.

REAL ESTATE COUNCIL OF ALBERTA

Joseph Fernandez for
Bob Myroniuk
Executive Director

