

January 3, 2017
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Case Summaries

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Case Summaries

Welcome to the Case Summaries monthly magazine - available on the first Monday of every month.

Inside you will find the summaries for all disciplinary decisions occurring at the Real Estate Council of Alberta (RECA) since the previous newsletter, including any suspensions and approved lifetime withdrawals from the industry.

RECA is authorized to carry out conduct proceedings under [Part 3](#) of the *Real Estate Act*.

To review RECA's Publication Guidelines, click [here](#).

Letters of Reprimand

Ten real estate associates

- industry members must not make representations or carry on conduct that is reckless or intentional and that misleads or deceives any person or is likely to do so [s.42(a) of the *Real Estate Act Rules*]
- industry members misrepresented condominium sizes

In each case, the real estate professional misrepresented the registered size of a condominium unit. These cases took place when registered size was a required data field within their local real estate board's database. The real estate professionals were required to obtain the registered condominium unit size from the condominium plan, but they did not. The condominium plan is the only acceptable means through which a real estate professional can obtain a condominium unit's registered size.

Four real estate associates

- failure to immediately notify, in writing, the executive director [s.40 of the *Real Estate Act Rules*]

Section 40 of the *Real Estate Act Rules* requires industry members to immediately notify the executive director when certain events occur. The individuals in these matters had situations requiring notification occur three or more months before they notified the executive director. In each case, the industry members notified the executive director as part of their renewal process. Immediate is defined as "without delay," and in the absence of extraordinary circumstances, written notification to the executive director should occur not more than five days after the event in question. Industry members can submit their notification at any time through the myRECA system.

Letters of Reprimand

Real estate broker at all relevant times, currently a real estate associate

- failed to ensure proper management and control of documents [s.[51(1) (j) of the *Real Estate Act* Rules]
- the broker did not file annual returns to the Corporate Registration System and the business name was struck on October 2, 2015. The corporation registration was revived on October 9, 2015

Alberta corporations can be struck off the Corporate Registry's active records for failing to file their annual returns. Brokers whose brokerages are corporations need to ensure they file their annual return, to remain active on Alberta's Corporate Registry.

Administrative Penalties

Lap Duong,

Real estate associate registered with Re/Max Complete Realty

- failure to immediately notify, in writing, the executive director [s.40 of the *Real Estate Act Rules*]
- \$1,000

Carolyn Benesocky,

Real estate associate registered with Re/Max Real Estate (Edmonton) o/a Re/Max Real Estate

- two instances of failure to immediately notify, in writing, the executive director [s.40 of the *Real Estate Act Rules*]
- \$1,000 per Administrative Penalty

Section 40 of the Real Estate Act Rules requires industry members to immediately notify the executive director when certain events occur. Immediately is defined as “without delay,” and in the absence of extraordinary circumstances, written notification to the executive director should occur not more than five days after the event in question. Industry members can submit their notification at any time through the myRECA system.

Administrative Penalties

Christopher Reed,

Real estate associate registered with Core Real Estate Group

- failed to provide competent service [s.41(b) of the *Real Estate Act Rules*]
- Mr. Reed did not take any steps to ensure the property was measured using the Residential Measurement Standard.
- \$1,500

Chun Yuan,

Real estate associate registered with Century 21 Platinum Realty

- failed to provide competent service [s.41(b) of the *Real Estate Act Rules*]
- Mr. Yuan did not take any steps to ensure the property was measured using the Residential Measurement Standard.
- \$1,500

The Residential Measurement Standard requires real estate professionals to personally measure, or engage a qualified person to measure, all properties they are listing for sale. In addition to measuring and calculating the RMS size, real estate professionals, as part of their listing due diligence, should also download and review the registered condominium plan. It is extremely rare for the RMS size to be equal to or larger than the registered condominium plan in a single-level attached condominium. In both these matters, the real estate professional did not measure the property, and used an RMS size that was greater than the registered condominium plan size.

Nawab Homes & Real Estate Consultants Ltd., Azher Chaudhary and Syed Rizvi,
Unauthorized

- no person shall deal as a mortgage broker or advertise themselves as, or in any way hold themselves out as a mortgage broker without authorization [s.17(b) (d) of the *Real Estate Act*]
- Azher Chaudhary and Syed Rizvi are sole directors of Nawab Homes & Real Estate Consultants Ltd. Neither Chaudhary, Rizvi nor Nawab Homes are authorized to deal in mortgages in Alberta. Mr. Chaudhary told a borrower they could connect him to people who would fund a mortgage. The borrower received a mortgage, but the supporting documentation submitted to the lender was false and misleading. Nawab Homes charged and received a fee for this service. In December 2016, Nawab Homes told a RECA investigator they did not advertise mortgage services. On December 16, 2016, Nawab Homes advertised services for 1st and 2nd mortgages by way of scrolling sign outside the business. Nawab Homes again told a RECA investigator they did not deal in mortgages. The investigator instructed them to immediately cease doing anything that required a licence. On January 3, 2017, the business was still advertising services for 1st and 2nd mortgages on a scrolling sign. When a RECA investigator asked why the sign was outside the business, the person hung up, and Nawab Homes would no longer cooperate.
- \$25,000

The very act of advertising services for 1st and 2nd mortgages is considered "dealing as a mortgage broker," and the individuals and company in this case do not hold such an authorization. Even if the entities named in this matter never actually assisted anyone with securing a mortgage, the *Real Estate Act* considers advertising the these mortgage services as "dealing as a mortgage broker," and an authorization is required.

Administrative Penalties

Kevin Rakowski,

Real estate associate registered with Re/Max Real Estate Centre

- failed to provide competent service [s.41(b) of the *Real Estate Act Rules*]
- Mr. Rakowski did not ensure the property was measured using the Residential Measurement Standard, and instead stated the above grade size using the builder plan size.
- \$1,500

The Residential Measurement Standard requires real estate professionals to personally measure, or engage a qualified person to measure, all properties they are listing for sale. It is not acceptable to use the builder's plan size without physically measuring the property.

Lifetime Withdrawals

Kenneth Klassen, Lifetime Withdrawal from Industry

On January 25, 2016, Kenneth Klassen, previously a real estate associate in Calgary, applied to permanently withdraw from industry membership.

At the time of his application, Mr. Klassen was the subject of conduct proceedings under the *Real Estate Act*. The issues under investigation were:

- representation of multiple straw buyers (participation in fraudulent or unlawful activities in connection with the provision of services)
- failure to provide competent service to his clients
- failure to ensure his role was understood
- failure to provide documentation to his brokerage
- failure to keep his broker informed of his activities

At the time of Mr. Klassen's withdrawal from industry, there had been no disciplinary hearing, admissions or findings of fact.

The Real Estate Council of Alberta approved Mr. Klassen's application to withdraw, and this results in a voluntary lifetime prohibition from industry membership; conduct proceedings are now discontinued.

Lifetime Withdrawals

Lorna MacNeil, Lifetime Withdrawal from Industry

On January 25, 2016, Lorna Macneil, most recently a real estate broker operating in Fort McMurray and Medicine Hat, applied to permanently withdraw from industry membership.

At the time of her application, Ms. Macneil was the subject of conduct proceedings under the *Real Estate Act* related to shortages in trust fund accounts that held owner's rent money and security deposits. In December 2016, RECA suspended Ms. Macneil's real estate licence for not cooperating with the investigation.

At the time of Ms. Macneil's withdrawal from industry, there had been no disciplinary hearing, admissions or findings of fact.

The Real Estate Council of Alberta approved Ms. Macneil's application to withdraw, and this results in a voluntary lifetime prohibition from industry membership; conduct proceedings are now discontinued.

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Case Summaries are published by the Real Estate Council of Alberta.

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