

February 7, 2017

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# Case Summaries

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Suspension



# 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](#).

The *Real Estate Act* Rules set out the processes for the executive director to:

- determine whether a learner complied with the Education Code of Conduct for Learners
- provide a prospective industry professional with an opinion as to whether or not they are suitable for licensing before they enroll in and begin a RECA education program
- review licence applications to determine if the applicant is of good character, that the issuance of a licence is in the public interest, and does not harm the integrity of the industry

Results from recent files related to these processes are summarized below.

## Suitability Review – Mr. J.B.

Mr. J.B. asked the Executive Director to review his suitability to become authorized as a real estate appraiser. The Executive Director found that J.B. was unsuitable in that he did not act honestly and with integrity. In particular, the Executive Director found Mr. J.B. made statements to RECA about his criminal proceedings. The sworn statements received were not consistent with the facts. Mr. J.B. failed to provide the Executive Director with information about a perjury charge and a related arrest warrant.

The executive director denied providing pre-authorization for Mr. J.B. to act as a real estate appraiser for the following reasons:

- provided false information during suitability process
- did not provide information to RECA to show their character as acting honestly and with integrity

## Suitability Review – Mr. M.M.

Mr. M.M. asked the Executive Director to review his suitability to become authorized as a real estate associate. The Executive Director found he was not suitable. Mr. M.M. worked for a federal government department dealing with the importation of goods and held a security clearance. He made a false declaration to import goods into Canada. M.M. then used his security clearance without proper authority to access federal government reports about the investigation into his false declaration. The Executive Director found he:

- breached the trust and authority placed upon him in employment, and
- failed to take responsibility for his actions.

## Suitability Review – Mr. C.G.

Mr. C.G. asked the Executive Director to review his suitability to become authorized to trade in real estate. The Executive Director found C.G. was unsuitable. Mr. C.G. was not forthcoming about his past criminal behaviour. The Executive Director found Mr. C.G.'s statement to RECA about his criminal activity was not truthful. C.G. had a criminal record with one conviction for manslaughter, one conviction for obstructing a police officer, and one conviction for statutory release violation. Mr. C.G. failed to provide the Executive Director information about his full criminal history.

### Education Attainment Review – Mr. N.C.

Mr. N.C. took the Real Estate Associates Program but cheated on the exam. He accessed the web browser during the examination 56 times. Mr. N.C. did not take responsibility for his actions. In his statements to RECA, Mr. N.C. provided many intentionally misleading and conflicting statements about his cheating, and he made a false human rights allegation against the exam invigilator.

Rule #20 of the RECA Exam Guidelines for Learners that states:

*“Learners must not attempt to open any other computer programs, online windows, external websites, texts, emails or instant messages.”*

Principle 2 of the Education Code of Conduct for Learners that states:

*“Learners will at all times conduct themselves with honesty, integrity, and respectfulness.”*

Mr. N.C. was expelled from the Real Estate Associates Program, and not permitted re-entry in any of RECA’s education programs for 5 years.

### Licensing Refusal – Mr. R.J.

Mr. R.J. applied for authorization from RECA to trade in real estate. He was licensed in another province. The Executive Director denied his application. Although the criminal charge of possessing and transporting was eventually withdrawn, the Executive Director found R.J. was transporting 65 litres of GHB in his vehicle. GHB is known as a “date rape” drug. His statement about his personal use of GHB was not credible. He indicated the drug was a steroid he used in competitive bodybuilding. The Executive Director did not find this to be a credible statement because according to a drug expert report, 65 litres of GHB is a 35.64-year supply and Mr. R.J. was unable to provide proof of his involvement in competitive bodybuilding. He was found to have minimized the hazards associated with GHB. He did not acknowledge the seriousness of the drug given its known use in serious illegal activity.

## Letters of Reprimand

### Real estate associate

- failed to provide competent service [s.41(b) of the *Real Estate Act Rules*]
- the associate measured the rooms in the unit but did not measure the entire configuration of the unit. Thus, he failed to represent the property according to the Residential Measurement Standard (RMS).

### Real estate associate

- failed to provide competent service [s.41(b) of the *Real Estate Act Rules*]
- the associate measured the rooms in the unit, but failed to represent the property according to the Residential Measurement Standard (RMS)

Principle 4 of the RMS requires real estate professionals to measure the above grade levels of properties with common walls from the interior surface of the opposing exterior walls. Measuring individual rooms and adding them together does not meet principle 4 of the RMS.

### Real estate associate

- failed to provide competent service [s.41(b) of the *Real Estate Act Rules*]
- the associate included the patio in the property's measurement, and failed to represent the property according to the Residential Measurement Standard (RMS)

Principle 6 of the RMS indicates that real estate professionals can only include additions to the main structure and conversions of above grade areas within the structure if they are weatherproof and suitable for year-round use. In this case, the patio did not meet this criteria, and the real estate professional should not have included its size.

## Letters of Reprimand

### Real estate associate

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

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. 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

## Kelley Catharine Hajar,

Real estate associate registered with Royal LePage Premier Real Estate

- failed to provide competent service [s.41(b) of the *Real Estate Act* Rules]
- Ms. Hajar relied on the registered condominium documents due to the irregular room shapes in a condominium unit, and did not take steps to ensure the property was measured using the Residential Measurement Standard (RMS)
- \$1,500

## Darcy Powlik,

Real estate associate registered with Re/Max Real Estate

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

## Kyla Knight,

Real estate associate registered with Re/Max River City

- failed to provide competent service [s.41(b) of the *Real Estate Act* Rules]
- Ms. Knight did not take steps to ensure two condominium units properties were measured using the Residential Measurement Standard (RMS), and incorrectly represented the size of two condominium units.
- \$1,500

## Judith Rimmer,

Real estate associate registered with Re/Max Excellence

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



## Kellie Marie Simpatico,

Real estate associate registered with Re/Max Excellence

- failed to provide competent service [s.41(b) of the *Real Estate Act Rules*]
- Ms. Simpatico did not take steps to ensure a property was measured using the Residential Measurement Standard (RMS), and incorrectly represented the property's size.
- \$1,500

## Fan Yang,

Real estate associate registered with Century 21 Platinum Realty

- failed to provide competent service [s.41(b) of the *Real Estate Act Rules*]
- Mr. Yang did not take steps to ensure a property was measured using the Residential Measurement Standard (RMS), and incorrectly represented the property's size.
- \$1,500

## Haijun Yan,

Real estate associate registered with Century 21 Platinum Realty

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

# Administrative Penalties

## Karen Heron,

Real estate associate registered with Carton Realty Ltd.

- failed to provide competent service [s.41(b) of the *Real Estate Act* Rules]
- Ms. Heron did not take steps to ensure the property was measured using the Residential Measurement Standard (RMS)
- \$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 the case of condominium properties, it is not acceptable to rely on the condominium unit's registered size.

## Amar Singh Gill,

Real estate broker registered with Five Star Realty Ltd.

- failed to file brokerage accounting within 3 months of fiscal year end [s. 91(4) of the *Real Estate Act* Rules]
- the brokerage's year end was January 31, 2016. Despite RECA sending six emails to the brokerage and Mr. Gill's personal email with reminders of the required accounting forms and a link to detailed instructions on how to access the forms, Mr. Gill did not file the forms until January 23, 2017.
- \$1,500

A brokerage's accounting must be filed with the Council not later than 3 months after the end of the brokerage's fiscal year. The broker in this matter filed the forms almost a full year after the brokerage's fiscal year end.

## Jarrett Stephen Nixon,

Real estate associate registered with Hope Street Real Estate Corp.

- engaged in conduct that undermined public confidence in the industry [s.42(g) of the *Real Estate Act* Rules]
- a property management agreement gave the brokerage authority to repair a client's property without approval if it was under \$250. When the dishwasher needed repair, the property owner instructed a brokerage assistant not to make any repairs because her husband would make the repair.
- the owner's husband emailed the assistant after fixing the dishwasher, and the brokerage assistant acknowledged this communication.
- two days later the brokerage sent a repair person to fix the dishwasher. The brokerage expensed the invoice of \$156.19 to the property owner's account.
- when the property owner questioned the amount, Mr. Nixon reviewed the matter and determined there was a miscommunication between brokerage staff. Mr. Nixon offered to refund the invoice but only if the owner signed a form releasing the brokerage from any liability related to multiple issues. The owner refused and the brokerage did not refund the invoice.
- \$2,500

The real estate professional admitted there was a brokerage miscommunication, and should have immediately and unconditionally reimbursed the client. Instead, he attempted to leverage the reimbursement for an unconditional release; the client refused and did not receive reimbursement.

# Suspension

## John Malcolm - Real Estate Licence Suspended

On February 22, 2017, the Real Estate Council of Alberta (RECA) suspended the real estate licence of John Malcolm. RECA suspended Mr. Malcolm for refusing to cooperate with a person conducting an investigation.

As a result of this suspension, John Malcolm may not trade in real estate in Alberta. His suspension will continue until the executive director is satisfied he has cooperated with the investigation.

Mr. Malcolm was most recently registered as a real estate associate with Re/Max River City in Edmonton.

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Appointed from the public

### BONNY CLARKE

Appointed from non-AREA industry members

### BOBBI DAWSON

Appointed from the boards outside of Calgary and Edmonton

### RAMEY DEMIAN

Appointed from the industrial, commercial and investment real estate sector

### TONY DHALIWAL

Appointed from the public

### BILL KIRK

Appointed from the Calgary Real Estate Board

### BRIAN KLINGSPON, CHAIR-ELECT

Appointed from the REALTORS® Association of Edmonton

### PHIL MCDOWELL

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Appointed from the boards outside of Calgary and Edmonton

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Appointed from residential real estate industry members

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Appointed from the real estate appraisal sector

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### CONTACT RECA

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

Please forward any questions regarding the content of Case Summaries, or any questions regarding licensing or mandatory education, to [info@reca.ca](mailto:info@reca.ca)



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