THE REAL ESTATE COUNCIL OF ALBERTA

Case:	008780
Process:	Section 39 & 83 of the *Real Estate Act*
Industry Member:	Kimberly Anne McDonald
Authorization:	Real Estate Associate
Registration:	Century 21 Westcountry Realty Ltd. currently registered with 377245 Alberta Ltd. O/A Re/Max Real Estate Central Alberta
Document:	ADMINISTRATIVE PENALTY
Penalty:	$1500.00 (see Schedule 2 of the Bylaws)

Payment
This Penalty must be paid within 30 days of the date this Notice was issued.

If you fail to pay the Penalty the Executive Director may commence collection under Part 6 of the *Real Estate Act* and may suspend your authorization under section 38.1 of the Rules.

If you pay the Penalty
- You will have satisfied the Administrative Penalty and no further proceedings under Part 6 will be taken against you.
- You cannot be charged under the *Real Estate Act* with an offence for the contravention(s) in this Administrative Penalty.

TO: Kimberly Anne McDonald

The Executive Director of the Real Estate Council of Alberta (RECA) has determined there is sufficient evidence you have contravened section 53(d) of the *Real Estate Act* Rules and this is conduct deserving of sanction.

53(d) a real estate associate broker and associate must:

> *keep the broker informed of the activities being performed by the associate broker or associate on behalf of the brokerage;*

Particulars of the contravention(s):

1. During December 2018, you failed to keep your broker informed of your activities with brokerage clients, contrary to section 53(d) of the *Real Estate Act* Rules:
    a) From December 1 to December 6, 2018, you contacted clients of Century 21 Westcountry Realty Ltd. to notify them you were leaving the brokerage. You presented the clients with termination letters and Exclusive Seller Representation Agreement Terminations for signatures. These activities were done on behalf of the brokerage. The evidence suggests you intentionally withheld informing your broker until you had discussed termination with the brokerage clients.
    b) On December 7, 2018, you notified your broker you were leaving and handed over the terminations signed by the brokerage clients.
    c) On December 7, 2018, your registration was transferred from Century 21 Westcountry Realty Ltd to Re/Max Real Estate Central Alberta.
    d) On December 7, 2018, Century 21 Westcountry Realty Ltd. per the clients' wishes terminated all Exclusive Seller Representation Agreements.

As a real estate professional, you trade in real estate on behalf of your brokerage. You advertise on behalf of your brokerage. You service clients on behalf of your brokerage. You prospect for clients on behalf of your brokerage and you bring clients to the brokerage. Regardless of how they got there, the clients are the brokerage's clients and when you transfer to another brokerage, you need permission from your original brokerage to approach clients about transferring. Your original brokerage may not agree to the transfer, in which case, you can't ask the clients to transfer.

Real estate professionals should proactively discuss a transfer with their broker before terminating their registration. Finding out how to deal with existing clients is one of the key elements of that conversation. You may have already considered and dealt with this issue in your employment agreement or independent contractor agreement with the brokerage. Alternatively, you may have to deal with the issue in the meeting with your broker without the benefit of a term in an employment agreement. Either way, you must have the brokerage's consent to approach existing clients about transferring with you.

The Executive Director considered the following aggravating and mitigating factors:

Aggravating Factors

- Industry professionals must respect that brokerage clients are not their clients. The broker must be kept informed of any material actions taken with a brokerage client. RECA must deter conduct that fails to meet this standard.

Appeal

You have the right to appeal this Administrative Penalty to a Hearing Panel. See **section 83.1 of the** ***Real Estate Act*** for what you must do to appeal.

In an appeal you will be given a full opportunity consistent with procedural fairness and natural justice to present evidence before the Hearing Panel in relation to the contraventions alleged.

Your written notice of appeal must comply with section 83.1 and must be received by the Executive Director **within 30 days** of you receiving this Administrative Penalty.

If you appeal, payment of the Penalty will not be required until an order to pay a penalty is issued by the Hearing Panel. If you have any questions regarding particulars or the appeal process, please contact:

Name:	SSC, Professional Conduct Review Officer
Phone:	403.228.2954; Toll Free: 1.888.425.2754
Fax:	403.228.3065
Address:	Real Estate Council of Alberta Suite 202, 1506 11 Avenue SW Calgary, Alberta, T3C 0M9

Issued at Calgary, Alberta, on May 7, 2019.

Charles Stevenson for
Bob Myroniuk, Executive Director
of the Real Estate Council of Alberta