

June 11, 2019

July 15, 2019

# Case Summaries

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# Case Summaries

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Welcome to the Case Summaries monthly magazine.

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*.

Questions about disciplinary information RECA publishes and why? Review [RECA's Publication Guidelines](#) online.

For more information about the cases summarized in this publication, please click on the underlined blue heading at the start of each summary.

# Letters of Reprimand

## Click on names to view the full decision

### [Claude Gaboury](#)

Real estate associate registered with Re/Max Real Estate (Edmonton) Ltd.  
O/A Re/Max Real Estate

- an industry member must not disclose information regarding a client, property or transaction to another person unless it is authorized by the client or required by law [s.44(1) of the *Real Estate Act Rules*]
- in June 2018, Mr. Gaboury emailed an offer to purchase to his clients, however the offer to purchase was for a different property and meant for another client

Industry professionals must safeguard all personal information regarding their clients and adhere to the brokerage policies for the maintenance and protection of personal and confidential information. When communicating documents that contain personal information, industry professionals must ensure it reaches the intended recipient.

### [Graham Terryberry](#)

Real estate associate registered with 4th Street Holdings Ltd.  
O/A Re/Max Real Estate (Central)

- industry members must provide competent service [s.41(b) of the *Real Estate Act Rules*]
- in December 2018, Mr. Terryberry prepared an offer to purchase contract on behalf of his clients
- Mr. Terryberry adjusted the date on one of the terms in the contract to make the offer more attractive
- Mr. Terryberry failed to alert the client of the change or explain why the change was made
- the client reviewed the offer and noticed a change was made to the date of the term
- at that time Mr. Terryberry discussed the change with his clients and followed the client's instructions to change the date back

Industry members must always act in their client's best interests and discuss all actions taken on their client's behalf. In this case, the associate modified the offer to purchase without informing their client. Any changes to an offer to purchase should occur after the associate has discussed the benefits and risks of a change and the client has given instructions on how to proceed. It is a failure to exercise reasonable care and skill by making a change to an offer to purchase prior to discussing it with the client.

# Letters of Reprimand

## [Deena Caputo](#),

Real estate associate registered with Masters Realty Ltd. O/A Century 21 Masters

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

## [Tracy Lynn Carson](#),

Real estate broker registered with South Star Realty Inc. O/A Maxwell South Star Realty

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

## [Robert Furukawa](#),

Real estate associate registered with South Country Real Estate Services Ltd. O/A Royal LePage South Country

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

Industry members must immediately notify, in writing, the executive director when certain events occur. In these cases, the industry professionals had a situation requiring notification occur months before they notified the executive director. 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. In this case, the brokerage waited several months to notify RECA.

# Administrative Penalties

## Bradley Lyons,

Real estate associate registered with Century 21 Foothills South Ltd.  
O/A Century 21 Foothills South Real Estate

- before eliciting or as soon as possible upon receiving confidential information from any person concerning that person's real estate needs, motivation, financial qualifications or in any event before entering into a service agreement, an industry member must disclose in writing to that person whether the industry member is acting in the trade or anticipated trade on behalf of any other person, in any capacity [s.55(1) of the *Real Estate Act Rules*]
- Mr. Lyons acted as a representative in a real estate transaction for both the buyer and the sellers of the property
- Mr. Lyons informed the sellers he had buyers
- Mr. Lyons negotiated with both parties and the transaction was completed
- Mr. Lyons did not disclose in writing to any of the parties the nature of the services he was providing, or on whose behalf he was acting in the trade or anticipated trade, or any other facts which may have influenced either the buyers or the sellers
- \$4,500

Industry members must disclose their role in writing in any transaction. In this case, the associate should have disclosed to both the seller and the buyer his role in the transaction.

# Administrative Penalties

## Bradley Lyons,

Real estate associate registered with Century 21 Foothills South Ltd.  
O/A Century 21 Foothills South Real Estate

- an industry member shall not provide any services to the client or potential client in a trade or anticipated trade in which the industry member has, or will have, a conflict of interest without receiving the written and informed consent of the party [s.54(3) of the *Real Estate Act* Rules]
- Mr. Lyons had previously acted as a representative in real estate transactions for each of the buyers and sellers of the property
- Mr. Lyons informed the sellers that he had potential buyers
- Mr. Lyons referred to the prospective buyers as clients and showed them the property
- Mr. Lyons received multiple competing offers
- Mr. Lyons informed the sellers of the offers and was informed to counter back with the highest offer
- Mr. Lyons provided no written or informed consent regarding the conflict of interest in relation to any services he provided to any of the parties
- \$4,500

Industry members must disclose any conflict of interest and obtain the written and informed consent of all parties to continue providing services. In this case, the associate had previous relationships with numerous potential buyers and the sellers, requiring written consent from all parties in order to continue their relationship with the associate.



# Administrative Penalties

## Bradley Lyons,

Real estate associate registered with Century 21 Foothills South Ltd.  
O/A Century 21 Foothills South Real Estate

- no industry member shall solicit, accept or receive from the public or from the industry member's client money or other consideration except in the usual course of carrying on the business of an industry member [s. 18(1) of the *Real Estate Act*]
- no industry member shall receive money in the course of carrying on business as an industry member unless, before receiving the money, the industry member has entered into a service agreement with the person who provides the money or on whose behalf it is to be held that expressly acknowledges the trust arrangement between them and sets out the terms on which the money will be received, held and disbursed [Real Estate Act s. 18(2)]
- Mr. Lyons provided a handwritten purchase contract for a property and witnessed the buyer's signature on the contract
- the handwritten contract contained no information for both the buyer and seller representative
- Mr. Lyons' brokerage later discovered a typed purchase contract with Mr. Lyons signature that included the following term:
  - *seller to pay commissions upon closing of house of the sum of 3% of selling price to Brad Lyons*
- the brokerage informed Mr. Lyons that commissions could not be received like this and that all paperwork is required to go through the brokerage
- the transaction completed and Mr. Lyons received a commission check worth \$11,497.50, which he deposited into his personal account
- Mr. Lyons has taken no steps to remedy his non-compliance
- \$15,000

All transactions must go through the brokerage, including all commissions and paperwork. Mr. Lyons drafted terms to receive money directly from a client, and he received that money without entering into a service agreement, and in direct opposition to instructions clearly communicated to him by his brokerage.

# Administrative Penalties

## Emily Loomis,

Real estate broker registered with Leep Realty Ltd. O/A The Loomis Real Estate Group

- failed to file brokerage accounting within three months of the fiscal year end [s.91(4) of the *Real Estate Act* Rules]
- the brokerage fiscal year end was due on November 30, 2018
- RECA sent numerous email reminders to file the appropriate forms by February 28, 2019, including all the necessary requirements and accountant designations that were required
- Ms. Loomis requested an extension to RECA on February 26 indicating the person hired to prepare the report was not qualified to do so
- RECA declined the request on February 26, 2019
- Ms. Loomis filed the fiscal year end on June 10, 2019
- \$1,500

RECA requires the Form 3 "Accountants Report" to be completed by a Chartered Accountant, a Certified General Accountant, a Certified Management Accountant, or Chartered Professional Accountant. It is a broker's responsibility that the person hired can comply with the terms of engagement found in Form 1 "Engagement Letter Between Accountant and Client."

## Darryl Martens,

Real estate associate registered with 4th Street Holdings Ltd. O/A Re/Max Real Estate (Central)

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

Industry members must immediately notify, in writing, the executive director when certain events occur. In this case, the industry professional had a situation requiring notification occur months before he notified the executive director. 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.



# Administrative Penalties

## [Kenneth McJannet](#),

Mortgage broker registered with Equity Mortgage & Investments Ltd.

- a mortgage broker must ensure the business of the brokerage is carried out competently and in accordance with the Act, the Bylaws, and the Rules [s.67(1)(e) of the *Real Estate Act* Rules]
- on March 28, 2018, Mr. McJannet's mortgage brokerage errors and omissions insurance expired
- from March 29, 2018 to September 16, 2018, Mr. McJannet's mortgage brokerage failed to have insurance in place
- Mr. McJannet was the broker at the time
- on September 17, 2018, Mr. McJannet's mortgage brokerage insurance was reinstated
- during the period of March 29, 2018 to September 17, 2018, Mr. McJannet's brokerage handled mortgage files
- \$1,500

Mortgage brokerages are required to carry errors and omissions insurance. This provides protection for both consumers and the brokerage in the event of a claim. Mortgage brokers have a responsibility to ensure the business of the brokerage is carried out in accordance with the legislation.

## [Stephen Wright](#),

Unlicensed

- trading in real estate without authorization [s.17(a) of the *Real Estate Act*]
- through December 2015–May 2019, Mr. Wright advertised and contracted services that he was not authorized to perform
- Mr. Wright has continued to conduct a property management business that he has no authorization to trade in
- \$25,000

No person shall trade in real estate as a real estate broker, unless that person holds the appropriate authorization for that purpose issued by Council. In this case, Mr. Wright, advertised his property management services on multiple sites. Mr. Wright was not authorized to provide these services. Unlicensed persons who provide services that require a licence put consumers at serious risk. Unlicensed persons do not have the required education or errors and omissions insurance, and consumers working with unlicensed persons do not receive protection under the Real Estate Assurance Fund.

# Administrative Penalties

## Marc McMahon,

Real estate associate registered with Re/Max Real Estate Centre, currently a real estate broker registered to The Foundry Real Estate Company Ltd.

- an industry member who is in a sole agency relationship with a buyer must take reasonable steps to discover relevant facts pertaining to any property for which the buyer is considering making an offer [s.58(i) if the *Real Estate Act* Rules]
- in November 2013, Mr. McMahon represented the buyer in the purchase of a property, which included a titled parking spot
- the property feature sheet represented that the parking stall was assigned, and did not mention the stall was on title. Mr McMahon relied on this representation
- Mr. McMahon did not pull the title for the property, or review that the parking spot was assigned
- the buyer believed the parking spot was assigned and discovered the parking spot was titled in 2018, this led to issues with the parking spot regarding ownership and unpaid taxes
- \$1,500

Industry professionals have an obligation to take reasonable steps to discover relevant facts regarding a property. In this case, the industry professional should have reviewed the title for the property and not relied on other representations.

## Hardeep Tut,

Real estate associate registered with Vision Realty Inc. O/A Century 21 Bravo Realty

- industry members must not engage in conduct that undermines public confidence in the industry, harms the integrity of the industry, or brings the industry into disrepute [s.42(g) of the *Real Estate Act* Rules]
- on January 25, 2019, a phone call took place between Mr. Tut and a client
- the client informed Mr. Tut that they would not be selling their home through his brokerage, but with a different real estate brokerage
- during this conversation Mr. Tut used inappropriate and profane language multiple times
- \$1,500

Industry professionals must maintain their composure when faced with conflict or difficult situations. RECA's Good Character Policy defines professionalism as a standard expected of industry professionals. Industry professionals must treat all consumers with civility, respect, and professional courtesy at all times.

## Royal LePage Innovate – Brokerage Licence Suspended

On June 20, 2019, the Real Estate Council of Alberta (RECA) suspended the licence of Dione Irwin Real Estate Inc. o/a Royal LePage Innovate in Airdrie.

Under Section 35(2)(c) of the *Real Estate Act Rules*, RECA may suspend the licence of a brokerage if RECA receives information that indicates the individual who is registered as the broker is no longer able to perform the duties and responsibilities of a broker outlined in the Rules.

As a result of the brokerage licence suspension, the registrations of any industry professionals who were registered with this brokerage are cancelled and service agreements with this brokerage end. To read more about what to do if your brokerage shuts down, or if a brokerage you are dealing with shuts down, please see the Information Bulletin: *When your real estate brokerage closes*.

All active trades in real estate involving this brokerage are affected. Brokerages or consumers who have pending purchases or sales with deposits being held in trust with this brokerage should consider amending their purchase contract to transfer their trust deposit to a different brokerage or lawyer.

## Trevor William Fenn – Mortgage and Real Estate Licences Suspended

On June 21, 2019, the Real Estate Council of Alberta (RECA) suspended the real estate and mortgage licences of Trevor William Fenn. Mr. Fenn is not authorized to trade in real estate or deal in mortgages.

RECA determined it is in the public interest to temporarily suspend Mr. Fenn. Allegations against Mr. Fenn include engaging in conduct that presents a risk of harm to the public, undermines public confidence in the industry, harms the integrity of the industry, or brings the industry into disrepute.

Mr. Fenn's licence will remain suspended pending the outcome of RECA's conduct proceedings.

Mr. Fenn was most recently a real estate associate for 1601407 Alberta Ltd. O/A Re/Max Complete Realty and a mortgage associate for MA Mortgage Architects Inc. O/A Mortgage Architects.

## 2018-2019 Council Members

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### BOBBI DAWSON

Appointed from the boards outside of Calgary and Edmonton

### AMINA DEIAB

Appointed from the public

### RAMEY DEMIAN

Appointed from the industrial, commercial and investment real estate sector

### JT DHOOT

Appointed from non-AREA industry members

### BILL KIRK

Appointed from the Calgary Real Estate Board

### BRIAN KLINGSPON, PAST CHAIR

Appointed from the REALTORS® Association of Edmonton

### TIAGO LAGE

Appointed from the public

### PHIL MCDOWELL

Appointed from the mortgage brokerage sector

### STAN MILLS, CHAIR-ELECT

Appointed from the boards outside of Calgary and Edmonton

### ROBYN MOSER

Appointed from residential real estate industry members

### ROBERT TELFORD, CHAIR

Appointed from the real estate appraisal sector

### CHRISTINE ZWOZDESKY

Appointed from the property management sector

## RECA Management

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### BOB MYRONIUK

Executive Director

### JEAN FLANAGAN

Director of Strategic Initiatives & External Relations

### WARREN MARTINSON

Director of Corporate Services

### JOSEPH FERNANDEZ

Director of Education Programs

### CHARLES STEVENSON

Registrar

### STACY PAQUIN

General Counsel & Corporate Secretary

### CONTACT RECA

The Case Summaries is published by the Real Estate Council of Alberta.

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



202, 1506 11 Avenue SW,  
Calgary, AB T3C 0M9  
Phone (403) 228-2954  
Toll-free 1-888-425-2754  
Fax (403) 228-3065  
[www.reca.ca](http://www.reca.ca)