

February 11, 2020

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Case Summaries

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Case Summaries

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

[Gordon Courtney Aird Atkinson,](#)

Real estate broker registered with Velocity Real Estate Team Ltd. o/a Atkinson Realty

- a brokerage must immediately notify the executive director in writing of a change in the address of the brokerage's registered business office [s.32(d) of the *Real Estate Act Rules*]
- on June 1, 2019, Atkinson Realty changed their registered brokerage address
- Mr. Atkinson notified RECA on June 26, 2019

[Keith George Prosser,](#)

Mortgage broker registered with Sterling Bridge Mortgage Corp.

- a brokerage must immediately notify the executive director in writing of a change in the address of the brokerage's registered business office [s.32(d) of the *Real Estate Act Rules*]
- in or around May 2019, Sterling Bridge Mortgage Corp. changed their registered address of their affiliated Alberta office
- RECA was notified on September 30, 2019

[Brent Larson Wipp,](#)

Mortgage broker registered with Amur Financial Group Inc.

- a change in the directors, officers or shareholders of a corporation if the brokerage is a corporation [s.32(g) of the *Real Estate Act Rules*]
- on June 2019, Amur Financial Group Inc. changed their shareholder structure
- RECA was notified on September 11, 2019

[Learning Opportunity](#)

Brokerages must immediately notify the executive director, in writing, when certain events occur. RECA defines immediately as "without delay," and in the absence of extraordinary circumstances, written notification to the executive director should occur not more than five (5) days after the event in question.

[Information Bulletin: Responsibilities and Prohibitions – Mortgage Brokerage](#)

[Information Bulletin: Responsibilities and Prohibitions – Real Estate Brokerage](#)

Letters of Reprimand

[Patrick Emi Okose,](#)

Real estate associate registered with Real Estate Professionals Inc.

- real estate professionals must trade in real estate only in the name that appears on their licence and in the name of the brokerage with which they are registered [s.53(a) of the *Real Estate Act* Rules]
- in October 2019, Mr. Okose did not advertise in the name of the brokerage he was registered with
- the landing page on www.patrickokosun.ca did not clearly identify Mr. Okose's brokerage name at the top of the page along with the rest of his branding, the brokerage was found at the bottom of the page after scrolling through content
- Mr. Okose's Facebook page did not include his brokerage name in all advertisements posted

Learning Opportunity

Industry professionals must clearly indicate their brokerage name in all advertising. A brokerage name is "clearly indicated" when a reasonable consumer, under normal circumstances, can clearly distinguish the name of a brokerage in an advertisement. In this case, the industry professional failed to clearly indicate their brokerage in their advertisements. A reasonable consumer should be able to identify the brokerage based on the advertisement alone.

[Advertising Guidelines](#)

Administrative Penalties

Rodger Wayne Forth,

Real estate broker registered with Rodger Forth o/a 4th Street Agencies

- industry members must provide competent service [s.41(b) of the *Real Estate Act* Rules]
- on June 27, 2019, Mr. Forth had a showing in a vacant condo unit
- Mr. Forth did not have the key for the unit door
- Mr. Forth pushed on the door to open it, resulting in a broken frame
- upon opening the door, Mr. Forth realized he had entered the wrong property
- \$1,500

Learning Opportunity

Industry professionals must be competent in all areas in which they provide services. In this case, the broker should have never entered the property without the key. The broker also should have taken extra time and care to ensure they were entering the proper unit.

[Information Bulletin: Competent Service](#)

Sometimes the same conduct can breach multiple rules. When reviewing such cases, the executive director has the discretion to determine which section of the legislation, should be pursued based on the facts of the matter.

Administrative Penalties

[Craig Ken Lamb](#)

Real estate associate registered with Real Estate Professionals Inc.

- industry members must fulfill their fiduciary obligations to their clients [s.41(d) of the *Real Estate Act* Rules]
- on November 22, 2019, Mr. Lamb contacted a seller to arrange a showing for their buyer clients
- the seller was self-represented and the property was listed through a mere posting
- Mr. Lamb asked the seller if they were comfortable paying Mr. Lamb's commissions if the seller receives an offer
- the seller did not want to commit to commissions
- Mr. Lamb stated that the seller needs to pay Mr. Lamb's commission first to pass on the showing
- Mr. Lamb did not consult his buyer clients to obtain their instructions in this matter concerning a potential fee
- \$1,500

Learning Opportunity

Real estate professionals in a client relationship with a buyer should discuss remuneration at the outset of their relationship, including instances where a seller is not offering commissions.

A clear understanding of the nature of the relationship and brokerage services is the best dispute prevention strategy for consumers and real estate professionals.

This real estate associate should have followed the provisions of the buyer representation agreement describing the amount or method to calculate the brokerage fees, or sought his buyer client's instructions on the matter of remuneration from this property before demanding commissions from the seller as a condition of showing.

[Information Bulletin: Mere Postings](#)

Administrative Penalties

Harmony Elizabeth Lamoureux

Real estate associate registered with Rocky Mountain Realty (1996) Ltd. o/a Royal LePage Rocky Mountain Realty

- real estate professionals must trade in real estate only in the name that appears on their licence and in the name of the brokerage with which they are registered [s.53(a) of the *Real Estate Act* Rules]
- on September 27, 2019, Ms. Lamoureux transferred to a new brokerage
- Ms. Lamoureux failed to update her advertising to accurately reflect the name of the brokerage she was registered with
- in December 2019, Ms. Lamoureux had several advertisements which did not display the name of her current registered brokerage
- \$1,500

Learning Opportunity

Industry professionals have a duty to keep advertising accurate and reflect the name of the brokerage they are currently registered with. Industry professionals have a duty to be aware of all of their advertisements and to update the brokerage name immediately after transferring to a new brokerage.

[Advertising Guidelines](#)

Administrative Penalties

[Keri Ann Roszko](#),

Real estate broker registered with Celtic Management Services Inc.

- industry members who are required to keep and operate a trust account shall disburse money received or held in trust, in respect of a dealing or trade in the business of the industry member, only in accordance with the rules and with the terms of the trust governing the use of that money [s.25(d) of the *Real Estate Act*]
- in or around June 2017, Celtic Management Services Inc. was holding funds in trust for a condo corporation, a regulated activity, and providing condo management services
- in May 2017, the condo corporation agreed that Celtic Management Services Inc. would manage a balcony replacement project on behalf of the condo corporation
- the project agreement stated that Celtic Management Services Inc. would earn a 5% fee, and payments would be authorized only after approved by the condo board upon satisfaction of the work performed by contractors
- on May 2, 2017, a condo board meeting took place, instructing that any invoices associated with the balcony project must have board approval
- on June 21, 2017, Celtic Management Services Inc. paid from trust a \$6,548.29 invoice associated with the balcony project to themselves, without providing any information to show board approval of the invoice
- \$1,500

Learning Opportunity

The broker's role in handling trust funds is that of a trustee. As a trustee, the broker must hold the trust monies for the parties to the transaction and keep and disburse money only in accordance with the terms of trust. In this case, the brokerage should have never disbursed money from the trust account for services that were not approved by the condo board in writing. This was a failure to follow the terms of trust governing the trust funds.

[Information Bulletin: Trust Money Disputes and Disbursements](#)

Condominium management is not governed by RECA; however, condominium managers who hold and disburse funds on behalf of a condo corporation for the control, management or administration of real estate are required to be licensed and must collect, maintain, and disburse the contributions in accordance with the terms of trust. Service Alberta has asked RECA to regulate condominium managers. Preparations are underway for RECA to licence and regulate condominium managers in the near future.

Administrative Penalties

Rebecca Anne Yarmoloy

Real estate associate registered with Re/Max Real Estate Calgary South Ltd. o/a Re/Max First

- a real estate professional must not make an inducement unless, at the time of making the inducement, they deliver to the person to whom the inducement is made, a statement clearly setting out all the details of the inducement signed by the real estate broker, associate broker, or associate, and if applicable, the other person involved in the inducement [s.54(1)(e) of the *Real Estate Act* Rules]
- in December 2018, Ms. Yarmoloy represented the buyers in the purchase of a property
- during the home inspection, issues in the garage door and plumbing were discovered
- Ms. Yarmoloy requested authorization from their broker to offer to cover part of the expenses to fix the garage door and plumbing, this was an inducement encouraging the buyers to proceed with the purchase
- the details of this inducement were not put into writing, creating confusion about the terms of the inducement
- \$1,500

Learning Opportunity

To offer an inducement, industry professionals must receive written approval of the inducement from their broker and give specific details of the inducement to the party in writing. This requirement is meant to ensure there is clarity on the inducement and to reduce conflict respecting the inducement. In this case, the industry professional offered an inducement without describing details of the transaction in writing.

[Information Bulletin: Inducements](#)

Administrative Penalties

Warren Constantine Phipps,

Real estate broker registered with Mountain Park Real Estate Ltd.

- representatives conducting investigations may, by notice in writing, demand that any person produce to the investigator any books, documents, records, and other things in that person's possession that are relevant to the investigation [s.38(2)(a) of the *Real Estate Act*]
- a person who is required under subsection (2) to answer the questions of a person conducting an investigation shall cooperate with the investigator and promptly respond to any questions [s.38(4)(a) of the *Real Estate Act*]
- on or about February 6, 2020, Mr. Phipps advised a RECA investigator that email was the best way to reach him
- on February 7, 2020, the RECA investigator demanded in writing that Mr. Phipps produce information relevant to the investigation by February 10, 2020
- Mr. Phipps requested that RECA extend the deadline to February 13, 2020, this request was approved
- on February 13, 2020, Mr. Phipps provided some of the information required to the RECA investigator via email
- on February 13, 2020, the RECA investigator responded to this email requesting the outstanding information, Mr. Phipps did not respond
- on February 19, 2020, the RECA investigator sent another email to Mr. Phipps requesting outstanding information, Mr. Phipps did not respond
- Mr. Phipps failed to provide the requested documents or documented evidence showing steps taken to attempt to provide the requested documents
- \$5,000

Learning Opportunity

The *Real Estate Act* requires industry professionals to cooperate with professional conduct reviews, including responding to questions and providing documentation. The obligation to cooperate extends to any person who is asked to produce documentation or answer questions relevant to the investigation. In this case, the industry professional failed to cooperate with the investigation or provide documentation when requested on multiple occasions.

[Information Bulletin: Cooperate with RECA](#)

Hearing Panel Decision

Cornelis Uittenboger

Real estate associate registered at the time with Linview Realty Inc., Brokerage; currently registered with 1119498 Alberta Ltd. o/a Royal LePage Wild Rose Real Estate

Real Estate Act Rules s.41(d) & 57(e)

Issues:

- industry members must fulfill their fiduciary obligations to their clients [s.41(d) of the *Real Estate Act Rules*]
- an industry member who is in a sole agency relationship with a seller must fulfill the fiduciary duties of loyalty, confidentiality, and of full disclosure of all conflicts of interest that may arise between the seller's interests and those of the industry member or buyers [s.57(e) of the *Real Estate Act Rules*]
- Mr. Uittenboger decided to buy a property that was listed for sale by an associate of Linview, which is a common law brokerage. This means that as an associate of Linview, Mr. Uittenboger was also an agent for the sellers of the property. This created a conflict of interest that Mr. Uittenboger did not disclose to the sellers.
- Mr. Uittenboger did not explain to the sellers that he was their agent and had fiduciary duties towards them and that the transaction therefore put him in a conflict of interest

Section 59 of the *Real Estate Act Rules*

Issues:

- in order to facilitate the purchase and sale of a property, a buyer, seller and brokerage may enter into a written transaction brokerage agreement with respect to that property where a brokerage represents a seller with whom it has an agency relationship and a buyer with whom it has an agency relationship is interested in the seller's property [s.59 of the *Real Estate Act Rules*]
- Mr. Uittenboger purchased property listed by an associate at his same common law brokerage. This made him an agent for the sellers and created a conflict of interest. Mr. Uittenboger had an obligation to ensure the sellers were extended the protections described in section 59, including presenting to the sellers a transaction brokerage agreement to alleviate the conflict of interest. He failed to extend to the sellers those protections."

Hearing Panel Decision

Section 42(a) of the *Real Estate Act Rules*

Issues:

- 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*]
- as a result of Mr. Uittenbogerd not explaining to the sellers that he was their agent and instead carrying on conduct as if he had no agency relationship with them, the sellers were misled into believing they had limited rights to disclosure of information from Mr. Uittenbogerd.

Section 62(1)(b) of the *Real Estate Act Rules*

Issues:

- an industry member trading in real estate on their own behalf, either directly or indirectly, must disclose in writing to the industry member representing a buyer or seller that the industry member is authorized under the Act [s.62(1)(b)(i) of the *Real Estate Act Rules*]
- Mr. Uittenbogerd did not disclose to the sellers in writing that he was a licensed real estate professional under the *Real Estate Act*.

Outcome:

The Panel accepted the agreed sanctions and ordered fines and a suspension for the contested breaches, including:

- Fines
 - Section 41(d) and 57(e) of the *Real Estate Act Rules*—Fine \$3,500
 - Section 59 of the *Real Estate Act Rules*—Fine \$3,500
 - Section 42(a)—Fine \$7,500
 - Section 62(1)(b)—Fine \$1,500
 - total fines for the breaches as outlined above \$16,000
- a suspension of one (1) month, commencing on March 3, 2020
- costs of \$1,500

RECA Management

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The Case Summaries is published by the
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