

Case Summaries

August 24 - September 20, 2021

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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 has reformatted case summaries to be more succinct and reduce duplication when cases deal with the same issues. This includes a new approach to the licensee names. RECA has also increased focus on the learning opportunities, including issues that may be relevant but not directly related to a case.

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

Some of the events mentioned in the decisions included in this issue occurred prior to December 1, 2020. The sanctions as noted, reflect the *Real Estate Act* as it was then applied. Learning opportunities reflect advice for licensees under the *Real Estate Act*, including the amendments that came into force on December 1, 2020.

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.



Hearing Panel Decision

John William Wade - Hearing Panel Decision – Phase 2: Decision on Sanction and Costs

Real estate associate registered at the time of conduct with 4th Street Holdings Ltd. o/a Re/Max Real Estate (Central). Currently registered with Irealty Calgary Inc. o/a Re/Max IRealty Innovations

On August 11, 2021, a Hearing Panel concluded a Phase 2 hearing and made a decision on sanctions and costs after a Phase 1 hearing confirmed Administrative Penalties levied against Mr. Wade, who was appealing these penalties.

Outcome:

In the Phase 1 Hearing, the Hearing Panel found that:

- Wade breached s.17(a) of the *Real Estate Act* by trading in real estate while unauthorized
- Wade breached obligations under s.41(e) of the *Real Estate Act Rules* by:
 - failing to disclose his unlicensed status when communicating with the buyer clients after the brokerage terminated Wade's employment
 - failing to ensure the buyer clients understood when Wade was registered with a different brokerage
- Wade breached obligations under s.41(d) of the *Real Estate Act Rules* by:
 - failing to advise the buyer clients that Wade was no longer licensed to represent their interests
 - asking the buyer clients to sign an Exclusive Buyers Representation Agreement with Re/Max Complete Realty without advising them that it was with a different brokerage and that they still had a similar agreement with an overlapping term with Re/Max Real Estate (Central)

In Phase 1, the Hearing Panel confirmed or varied the Administrative Penalty amounts being appealed as follows:

- confirmation of fines in the amount of \$5,000 for the breach of s.17(a) of the *Real Estate Act*
- a variance in fines to \$1,500 for the breach of s.41(d) of the *Real Estate Act Rules*
- a variance in fines to \$500 for the breach of s.41(e) of the *Real Estate Act Rules*
- costs in the amount of \$2,500

On August 11, 2021 the Hearing Panel considered submissions on whether they should quash, vary, or confirm the administrative penalties ordered in the Phase 1 Hearing. In the Phase 2 Hearing, the Hearing Panel has now ordered:

- confirmation of fines in the amount of \$5,000 for breach of s.17(a) of the *Real Estate Act*
- confirmation of fines to the amount of \$1,500 for breach of s.41(d) of the *Real Estate Act Rules*
- variation of fines in the amount of \$1,500 for the breach of s.41(e) of the *Real Estate Act Rules*
- costs to the Real Estate Council of Alberta in the amount of \$2,500

A blurred background image showing a person's hands typing on a laptop keyboard. The scene is set on a wooden desk with a pair of glasses and a tablet nearby. A blue semi-transparent rectangle is overlaid on the image, containing the text.

Administrative Penalties

Real Estate Act Rules s.91(4)

A real estate brokerage must file their brokerage's accounting within three months of the end of their fiscal year.

[William Carstairs,](#)

Real estate broker registered with Best Step Real Estate Services Ltd.

- Best Step Real Estate Services Ltd.'s fiscal year end was on March 31, 2021
- RECA sent numerous email reminders to Carstairs, to file the appropriate forms by June 30, 2021
- RECA received the appropriate forms on August 4, 2021
- \$1,500

[Robert Leslie Hippisley,](#)

Real estate broker registered with Coldwell Banker Cartier Realty

- Coldwell Banker Cartier Realty's fiscal year end was on March 31, 2021
- RECA sent numerous email reminders to Hippisley, to file the appropriate forms by June 30, 2021
- Hippisley was granted an extension to July 7, 2021
- RECA received the appropriate forms on July 9, 2021
- \$1,500

[Terrance Stephan Paholek,](#)

Real estate broker registered with Brokers Edge Realty Inc.

- Brokers Edge Realty Inc.'s fiscal year end was on December 31, 2020
- RECA sent numerous email reminders to Paholek, to file the appropriate forms by March 31, 2021
- Paholek has since ceased his brokerage operations
- RECA has not received the appropriate forms as of the publication of this Case Summaries
- \$1,500

Learning Opportunity

Brokerages provide accounting reports to RECA to ensure trust funds are being properly administered to protect the public and the integrity of the industry. A brokerage must file its accounting with RECA no later than three months after the end of the brokerage's fiscal year. In these cases, the brokers failed to file the forms by the deadline despite RECA sending numerous reminders and in one case giving an extension. In one case, the broker ceased their brokerage. Ceasing the brokerage does not lift the requirement to provide the appropriate accounting forms so RECA can ensure trust funds were properly administered.

[Real Estate Fiscal Year End](#)

Real Estate Act Rules s.69(a)

A mortgage licensee must only trade in real estate in the name on their licence, and registered brokerage.

Mathew Harvey Broom-Hall,

Mortgage associate registered with Verico iMortgage Solutions Flare Mortgage Group Inc. o/a Flare Mortgage

- Bloom-Hall was using a Facebook page and a website which both failed to indicate their registered brokerage name
- \$1,500

Learning Opportunity

Licensees must clearly indicate their brokerage name in all advertising, and if they use their name in advertising, it must be the name that appears on their licence. A brokerage name is "clearly indicated" when a reasonable consumer, under normal circumstances, can clearly distinguish the name of a brokerage based on the advertisement alone. In this case, the licensee failed to include the brokerage name they are registered with in their advertisements.

It is important to note that email addresses or hashtags that contain the brokerage name do not meet the brokerage name requirements in advertisements.

Brokerages must have policies and procedures in place for reviewing and approving its associates' advertisements and websites. The brokerage policies and procedures should outline the steps through which licensees can ensure their advertising complies with the advertising guidelines.

Advertising Guidelines

Real Estate Act Rules s.53(a)

A mortgage licensee must only trade in real estate in the name on their licence, and registered brokerage.

Julie Colleen Dempsey,

Real estate associate registered with Tempo Real Estate Ltd. o/a Royal LePage Benchmark

- Dempsey advertised their services on a bus bench
- the bench advertisement failed to include the name of the brokerage Dempsey was registered with
- Dempsey's brokerage had an advertising policy that stated all advertising must be approved by management
- Dempsey did not follow their brokerage policy regarding advertising
- \$1,500

Learning Opportunity

Licensees must clearly indicate their brokerage name in all advertising, and if they use their name in advertising, it must be the name that appears on their licence. A brokerage name is "clearly indicated" when a reasonable consumer, under normal circumstances, can clearly distinguish the name of a brokerage based on the advertisement alone. In this case, the licensee failed to include the brokerage name they are registered with in their advertisements.

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[Advertising Guidelines](#)

Real Estate Act Rules s.41(b)

A real estate licensee must provide competent service.

[Kevin Wade Haller](#),

Real estate associate registered with Vanovermeire Realty Inc. o/a Coldwell Banker Mountain Central

- on May 20, 2021, Haller had permission to show their buyer clients a property
- posted requirements on the listing stated wearing masks is required when viewing the property
- Haller and their clients failed to wear masks while in the property
- \$1,500

Learning Opportunity

Licensees must exercise reasonable care and skill when a property is under their care and control. They must obey the instructions of the seller and their brokerage when showing a property.

Property owners must have confidence their instructions will be followed, and brokerages expect licensees to follow their guidelines. This is especially important during the COVID-19 pandemic which presents additional risk when individuals enter a property.

Licensees are encouraged to use the COVID-19 property access checklists and agree to the conditions for access, in writing.

[Seller's Condition to Access Premises Checklist](#)

[Buyer's Condition to View the Premises Checklist](#)

[COVID-19 and Real Estate](#)

[COVID-19 Information for Real Estate Consumers](#)

Real Estate Act Rules s.54(1)(d)

A real estate licensee must not directly or indirectly advertise, communicate or offer an incentive except on behalf of their brokerage.

[Brian Kin-Hai Lee](#),

Real estate associate registered with Vision Realty Inc. o/a Century 21 Bravo Realty

- in April 2021, Lee advertised an incentive that stated “Refer a friend and get a \$500 Visa gift card” on their Facebook page
- this incentive was not a brokerage incentive
- \$1,500

Learning Opportunity

Licensees must not directly or indirectly, advertise, communicate or offer to any person their own incentives whose sole purpose is to attract business to them personally. A brokerage incentive must be available to all clients or potential clients of a brokerage. In this case, the licensee advertised an incentive that was not being offered by the licensee’s brokerage.

[Incentives](#)

Real Estate Act Rules s.40

Licensees must immediately notify the Registrar of certain prescribed events, in writing.

[Harmandeep Singh Tiwana](#),

Real estate associate registered with Grand Realty & Management Ltd. o/a Grand Realty

- Tiwana failed to immediately notify the registrar of a prescribed event, in writing
- \$1,000

Learning Opportunity

Licensees must immediately notify the registrar—prior to Dec 1, 2020, the Executive Director—in writing, when certain events occur (name change, discipline, criminal proceedings, etc.). In this case, the licensee had a situation requiring notification occur before they notified RECA. Immediately is defined as “without delay,” and in the absence of extraordinary circumstances, written notification to the Registrar should occur not more than five (5) days after the event in question.

[Notifying the Registrar– Real Estate and Mortgage Broker Professionals](#)

Real Estate Act Rules s.67(1)(e)

A mortgage broker must ensure that the business of the brokerage is carried out competently and in accordance with the Act, Bylaws, and Rules.

[Audrey Carol Wilson](#),

Mortgage Broker registered with Ownest Financial Inc.

- between October 2018 and July 1, 2019, Wilson's brokerage operated without errors and omissions insurance
- during this period, Wilson's brokerage handled multiples mortgage files
- \$1,500

Learning Opportunity

All mortgage brokerages are required to carry errors and omissions insurance. A mortgage broker must also ensure the business of the brokerage is carried out in accordance with the legislation. In this case, the brokerage did not have errors and omissions insurance for several months, yet handled multiple mortgage files. The brokerage put their clients at risk as they were not protected by insurance.

[Errors and Omissions Guidelines](#)

Real Estate Act Rules s.53(c)(i)

A real estate licensee must provide in a timely manner all original documents, and copies of all documents provided to their clients to their broker.

Bo Yang,

Real Estate Associate registered at the time of conduct with Urban Real Estate Services Ltd. o/a Urban-Realty.ca. Currently registered to Risi Group Holdings Ltd. o/a Stonemere Real Estate Solutions

- in October and November 2020, Yang listed two properties
- Yang owned both properties
- Yang's brokerage has a policy that all listing documents are to be submitted to the brokerage within 48 hours
- Yang stated they were unaware that their brokerage had this requirement
- to date the documentation has not been provided to the brokerage
- \$1,500

Learning Opportunity

All licensees must comply with legislation, including all legislation that enables a broker to carry out the activities specific to the broker or the broker delegate, such as the administration of trust funds. This is the reason real estate licensees must respond promptly to their brokerage and deliver all documentation regarding trades and potential trades. In this case, the licensee failed to provide documentation related to two property listings.

Responsibilities – Real Estate Associate Brokers and Associates



Letters of Reprimand

Real Estate Act Rules s.41(b)

Real estate licensees must provide competent service.

Real Estate Associate

- on May 7, 2021, the associate brought their buyer clients to view a property
- the sellers returned home to find their back door and the lockbox open
- the associate had trouble securing the lockbox, but believed it was locked when they left
- the associate did not check the back door prior to leaving and it was left open

Learning Opportunity

Licensees must ensure they exercise reasonable care and skill at all times when showing properties. Consumers must trust that licensees have taken proper steps to secure their property before leaving it. In this case, the licensee failed to ensure the house was fully locked up, leaving the back door and lockbox unsecured when they left.

Access to Property

Competent Service

Real Estate Act s.59(4)(e)(ii)

A brokerage must, if authorized to enter into a transaction brokerage relationship, disclose to the seller, all material facts relevant to the buyer's ability to purchase the property known to the brokerage.

Real Estate Associate

- on February 27, 2018, the associate's brokerage entered into a common law brokerage agreement to represent both the seller and the buyer for the purchase of a property, otherwise known as transaction brokerage
- the associate represented the brokerage while working with the buyer and another licensee from the brokerage represented the brokerage while working with the seller
- on April 10, 2018, the associate was made aware the buyer was having difficulty with their financing
- the associate was advised the client could not close on April 16, 2018, and they requested an extension of possession
- the associate disclosed to the seller that the buyer requested an extension as their financing was not complete
- upon instruction from their lawyer, the seller informed the associate that they would not change the possession date on the contract but would instead put forward closing day delay costs and wait until May 1, 2018
- on April 14, 2018, the associate was made aware that the buyer may face legal issues that would affect their ability to finance the purchase of the property
- the associate did not disclose this information to the seller
- the buyer did face legal issues and did not have the funds to purchase the property
- on May 1, 2018, the deal collapsed
- on May 9, 2018, the associate's brokerage paid the buyer's deposit to the seller's lawyer
- the seller stated, had they been aware of the legal issues and financing difficulties faced by the buyer, they would not have agreed to wait until May 1, 2018

Learning Opportunity

Transaction brokerage is a service option in which a brokerage or an individual licensee provides facilitation services to a buyer and seller in the same transaction. Part of the licensees' requirement is to tell the seller, all material facts about the buyer's ability to purchase the property.

Transaction Brokerage Guide

Real Estate Act Rules s.41(b)

Real estate licensees must provide competent service.

Real Estate Broker

- after measuring a property, the broker advertised the property on the feature sheet as having a measurement of 949 square feet
- the correct measurement using the Residential Measurement Standard (RMS) of the property was 909 square feet
- the broker stated the information presented on the listing was not what they measured
- the broker failed to exercise reasonable care and skill in reviewing the advertising for the property

Learning Opportunity

Licensees are expected to be competent in their services, including ensuring they measure properties using RMS or engage third parties to measure properties using RMS, and including that they exercise reasonable care and skill. In this case, the licensee did not exercise reasonable care and skill when reviewing the advertising for the property and failed to notice the error in the property measurement.

[Guide to Residential Measurement Standard in Alberta](#)

[Advertising - False and Misleading](#)

[e](#)

Real Estate Act Rules s.40

Licensees must immediately notify the Registrar of certain prescribed events, in writing.

Real Estate Broker

- the broker failed to immediately notify the Registrar of a certain prescribed event, in writing

Learning Opportunity

Licensees must immediately notify the Registrar—prior to Dec 1, 2020, the Executive Director—in writing, when certain events occur (name change, discipline, criminal proceedings, etc.). In this case, the licensee had a situation requiring notification occur before they notified RECA. Immediately is defined as “without delay,” and in the absence of extraordinary circumstances, written notification to the Registrar should occur not more than five (5) days after the event in question.

[Notifying the Registrar– Real Estate and Mortgage Broker Professionals](#)

Real Estate Act Rules s.43(2)(c)

A real estate licensee must provide any amendment or addition to the terms on an agreement, in writing, to the relevant parties.

Real Estate Associate

- in July 2020, the associate entered into an Exclusive Seller Representation Agreement for a property
- prior to the Agreement expiring, the associate had a verbal discussion with one of the seller clients to extend the Agreement
- the associate did not have the same discussion with the other seller client
- the Agreement expired October 30, 2020
- the associate continued to advertise the property after the expiry date and extended the listing with a November 30, 2020 expiry
- prior to the Agreement expiring on October 30, 2020, the associate failed to provide an amendment to extend the Agreement, in writing, to the sellers for their signature

Learning Opportunity

Written service agreements cannot be extended after they have already expired. When agreements expire, they are void, and a new agreement will have to be entered into should the parties want to continue working together.

Written service agreements must have all relevant signatures on the agreement and have all amendments documented and signed. Licensees must prepare documents that are legally binding. To be legally binding, all parties to the transaction must agree to contract amendments in writing. In this case, the licensee failed to provide a written amendment to extend their agreement to the sellers. Licensees must take no action until they have the written agreement from all their clients who are a party to a trade.

Service Agreements – Real Estate Brokerage

Competent Service

e

Real Estate Act Rules s.53(a)

A real estate licensee must only trade in real estate in the name, and brokerage to which they are registered.

Real Estate Associate

- the associate placed an advertisement on multiple bus benches
- the advertisement only listed partial licensee names of "Sam and Tam"

Learning Opportunity

Licensees must clearly indicate their name and brokerage name in all advertising. Licensees must trade only in the name that appears on their license. The name must include both first and last name and cannot differ in spelling or length unless the licensee has registered the appropriate AKA name with RECA. Using the full name of the licensee ensures consumers are clear about who they are dealing with, and can successfully perform a licence search on RECA's Find a Licensee tool. In this case, the licensee failed to advertise in their full name as it appears on their licence.

[Advertising Guidelines](#)

[AKA Policy](#)



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