

THE REAL ESTATE COUNCIL OF ALBERTA

Case Number: 011341.001  
Name on Licence: Austin Spencer Fleming  
Licence Sector and Class: Real Estate Associate  
Brokerage Name on Licence: Mountain View Real Estate Inc. o/a Re/Max Real Estate (Mountain View)  
Process: Appeal of an Administrative Penalty s.83.1 of the Real Estate Act

DOCUMENT: NOTICE OF HEARING

TO: Austin Spencer Fleming

A hearing is set for your appeal. Read this entire document to see what you must do.

**Hearing Information**

Date: Wednesday, November 24, 2021  
Time: 9:30 a.m.  
Venue: Virtual Hearing  
Hearing Panel: [K.O] - Chair, Panel member  
[G.P] - Panel member (Licensee)  
[S.D] - Panel member (Licensee)  
[A.D] - Panel Independent Legal Counsel (on call only)

(Alternates: [K.K], [B.R], [M.W])

The Administrative Penalty issued to you is attached.

## Virtual Hearings

Hearings at RECA are conducted virtually. The Hearing Administrator will provide you with the Guide to Virtual Hearings and you will receive assistance to participate in the virtual process.

## Why You Should Attend the Hearing

The hearing is your opportunity to respond to the allegations and state your side of the case in front of the Panel.

## Learn About the Hearing Process

Please read these guides on the RECA website

<https://www.reca.ca/complaints-discipline/hearings-information-procedures/>

- *Hearing and Appeal Practice and Procedures Guidelines and*
- *How to Represent Yourself at a Real Estate Council of Alberta Hearing or Appeal*
- *RECA Self-Represented Program*

## What You Should Bring to the Hearing

Bring any witnesses and evidence you want the Panel to consider, with you to the hearing.

## What Will Happen If You Don't Attend

If you do not attend the Panel may proceed to make a decision without you.

## What Will Happen At the Hearing

If the Panel finds a breach has been proven the Panel may do one or more of the things listed in **section 83.1(5)** of the *Real Estate Act*:

- Quash, vary or confirm the administrative penalty
- Order you to pay the costs of the investigation and the hearing.

## **Making Oral and Written Arguments to the Hearing Panel**

The Hearing Panel may accept oral and/or written arguments as part of the hearing. If the Hearing Panel accepts written arguments, it will set dates for the written arguments to be exchanged before accepting them.

## **You Can Get Legal Advice**

You may get legal advice and may be represented by legal counsel at the hearing. If you do not have a representative please read information for unrepresented Industry Members here:

<https://www.reca.ca/complaints-discipline/hearings-information-procedures/>

## **If You Object to a Panel Member**

Please review who is on the Panel. If you object to any of the people being on the Panel, you must advise the Hearings Administrator **who you object to and why within 14 days** of receiving this Notice. If you do not object to the Panel within 14 days, this Panel will conduct the hearing.

## **Postponing the Hearing**

If you are not available on the date set for the hearing you can apply to the Panel for a new date. Contact the lawyer for the Registrar and the Hearings Administrator as soon as possible if you need a new date.

Dated at Calgary, Alberta, on October 29, 2021.

(date)

"Signature"

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Charles Stevenson, Registrar  
of the Real Estate Council of Alberta

THE REAL ESTATE COUNCIL OF ALBERTA

Case Number: 011341  
Name on Licence: Austin Spencer Fleming  
Licence Type & Class: Real Estate Associate  
Brokerage Name on Licence: Mountain View Real Estate Inc. o/a Re/Max Real Estate (Mountain View)  
Process: Section 39 & 83 of the *Real Estate Act*  
Document: ADMINISTRATIVE PENALTY  
Penalty: \$1,500.00

**Payment**

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

**If you fail to pay the Penalty** the Registrar may commence collection under Part 6 of the *Real Estate Act* and may suspend your licence 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: Austin Spencer Fleming**

The Registrar of the Real Estate Council of Alberta (RECA) has determined there is sufficient evidence you have contravened **section 41(b) of the *Real Estate Act Rules*** and this is conduct deserving of sanction.

Rule 41 – *Licensees must:*

*(b) provide competent service*

## Particulars of the contravention(s):

1. In or around March 2021, you failed to exercise competent service, contrary to section 41(b) of the *Real Estate Act* Rules:
  - a) March 10, 2021, you had permission to show your Buyer clients the property located at [ADDRESS].
  - b) This was during the COVID-19 pandemic. There was a sign on the table outlining the COVID protocols to be followed. One of the protocols stated: "Please do not use bathrooms."
  - c) You allowed a person to use the bathroom. This was a failure to follow guidelines and expectations around showing properties. This was a failure to exercise reasonable care and skill.

The Registrar considered the following aggravating and mitigating factors:

### *Aggravating Factors*

- RECA has received multiple complaints from sellers about buyer agents failing to follow permissions or guidelines around showings. We must deter this conduct.

### **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 Registrar **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: [C.S], Professional Conduct Review Officer  
Email: [EMAIL]  
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 31, 2021.

"Signature"

Charles Stevenson, Registrar  
Real Estate Council of Alberta

cc [L.M], Real Estate Broker  
Re/Max Real Estate (Mountain View)