

# Case Summaries

March 30 - May 2, 2022

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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's name. 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.

A close-up photograph of a person's hand writing on a white, lined notebook. The person is using a light-colored wooden pencil with a green eraser tip. The background is blurred, showing other people in a classroom or office setting. A semi-transparent blue rectangular box is overlaid on the left side of the image, containing the text "Lifetime Withdrawal" in white, bold, sans-serif font.

# Lifetime Withdrawal

# David Lawrence Bauer - Lifetime Withdrawal from Industry

On April 13, 2022, the Residential Property Manager Industry Council of the Real Estate Council of Alberta (RECA) approved an application by David Lawrence Bauer under section 54 of the *Real Estate Act* to permanently withdraw their licence, effective immediately.

At the time of their application, Bauer was the subject of an investigation under the *Real Estate Act* Rules. The issues under investigation regarding Bauer were with respect to:

- failure to file the brokerage Fiscal Year End reports by the deadline
- provided false and misleading information to an investigator relevant to an investigation
- failure to provide documents used to review the brokerage trust accounts as requested by a Trust Assurance Practice Review
- failure to respond to an offer for purchase from another licensee
- provided misleading information to a property owner
- failure to provide the property owner rental disbursements and security deposit when requested
- misappropriation of trust funds
- multiple accounting errors concerning trust funds
- failure to adequately manage property
- providing false statements regarding property
- failure to enter into a written service agreement with the property owner
- failure to pay contractor invoices even though money was paid into trust account from an insurance company

The review into these matters is complete. No finding of conduct deserving of sanction or a referral to a hearing has been made by RECA's Registrar on any of the issues under investigation.

Under the *Real Estate Act*, the approved withdrawal application results in Bauer's lifetime prohibition as a licensee, effective immediately. It also results in the discontinuance of the aforementioned conduct proceedings.

For more information, please see the [approval letter](#) issued by the Chair of Residential Property Manager Industry Council.

A close-up photograph of a person's hand typing on a laptop keyboard. The image is partially obscured by a semi-transparent blue rectangular overlay on the left side. The word "Suspension" is written in white, bold, sans-serif font across the blue area.

# Suspension

## Rajneesh Aery - Mortgage Licence has been Suspended

On February 16, 2022, a Hearing Panel for the Real Estate Council of Alberta (RECA) suspended the mortgage associate licence of Rajneesh Aery for the period of three months, beginning April 1, 2022.

The Hearing Panel determined that Aery breached the following:

*Real Estate Act Rules s.42*

Licensee must not:

- (a) make representations or carry on conduct that is reckless or intentional and that misleads or deceives any person or is likely to do so
- (b) participate in fraudulent or unlawful activities in connection with the provision of services or in any dealings

The Hearing Panel also imposed fines and costs to Aery of:

- \$20,000 for breach of Rules s.42(a)
- \$20,000 for breach of Rules s.42(b)
- \$500 in costs for the investigation and proceedings

Aery was most recently registered as a mortgage associate with 1170245 Alberta Ltd. o/a Dominion Lending Centres Global.

A close-up photograph of a person's hand typing on a silver laptop keyboard. The hand is wearing a blue sleeve and a watch. The laptop is on a wooden desk. In the foreground, a pair of black-rimmed glasses and a smartphone are visible. The background is blurred, showing a green plant and a yellow cup. A semi-transparent blue rectangle is overlaid on the image, containing the text.

# Administrative Penalties

## Real Estate Act s.41(a)

A real estate licensee must act honestly.

### Ajay Esher Kainth,

Real estate associate registered at the time of conduct with 4 million.ca Inc. o/a Estateview. Currently Grand Realty & Management Ltd. o/a Grand Realty.

- on September 25, 2020, Kainth submitted a License Renewal Application
- in this application, Kainth falsely answered "no" on the question asking if they had been charged with a criminal offence
- when submitting this application, Kainth dishonestly declared that the information they provided in the application was true, complete, and accurate
- on January 14, 2021, Kainth submitted a License Transfer Application to change brokerages. In this application, Kainth falsely answered "no" on the question asking if they had been charged with a criminal offence
- when submitting this application, Kainth dishonestly declared that the information they provided in the application was true, complete, and accurate
- on September 16, 2021, Kainth submitted a License Renewal Application
- in this application, Kainth dishonestly declared that they were in compliance with the requirements of Section 40 of the *Real Estate Act*
- when submitting this application, Kainth dishonestly declared that the information they provided in the application was true, complete, and accurate
- \$3,000

### Learning Opportunity

Licensees must act honestly at all times. Honesty means conduct that is truthful, trustworthy, and genuine. In this case, the licensee provided false information on multiple licence renewal applications with RECA. The licensee failed to immediately notify the registrar of a change in the information on their application. Failing to act honestly is serious and undermines public confidence in the industry.

### Good Character Policy



## Real Estate Act Rules s.21

A real estate licensee must immediately notify, in writing, the Registrar of any changes in the information provided in support of a license application, or after that licence is issued.

### Ajay Esher Kainth,

Real estate associate registered at the time of conduct with 4 million.ca Inc. o/a Estateview. Currently Grand Realty & Management Ltd. o/a Grand Realty.

- on September 26, 2019, Kainth submitted a License Renewal Application
- in that application Kainth represented they had not been charged with a criminal offence
- on August 1, 2020, criminal code proceedings were commenced against Kainth
- Kainth failed to immediately notify the registrar of a change in the information they provided in their September 26, 2019, licensing application
- on September 25, 2020, Kainth submitted a License Renewal Application
- in that application Kainth represented they had not been charged with a criminal offence
- at that time, Kainth had been charged with a criminal offence
- Kainth failed to immediately notify the registrar of a change in the information they provided in their September 25, 2020, licensing application
- on January 14, 2021, Kainth submitted a License Transfer application to change brokerages
- in that application Kainth represented they had not been charged with a criminal offence
- at that time, Kainth had been charged with a criminal offence
- Kainth failed to immediately notify the registrar of a change in the information they provided in their January 14, 2021, licensing application
- on September 16, 2021, you submitted a License Renewal Application
- Kainth declared that you complied with the requirements of Section 40 of the *Real Estate Act*
- at that time, Kainth had been charged with a criminal offence
- Kainth failed to immediately notify the registrar of a change in the information they provided in their September 16, 2021, licensing application.
- \$1,500

Learning opportunity is on page 10.

## Real Estate Act Rules s.40

Licensees must immediately notify, in writing, the Registrar.

### [Ajay Esher Kainth](#),

Real estate associate registered at the time of conduct with 4 million.ca Inc. o/a Estateview. Currently Grand Realty & Management Ltd. o/a Grand Realty.

- Kainth failed to immediately notify, in writing, the registrar
- \$1,000

### Learning Opportunity

Licensees must immediately notify the registrar in writing, when certain events occur (name change, discipline, criminal proceedings, etc.). to immediately notify the registrar of a change in the information. The licensee applied multiple times for a licence renewal application and each time provided false information on their application. The licensee failed to immediately notify the registrar of a change in the information on their application. 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 s.91(4)*

A brokerage's accounting shall be filed with RECA no later than 3 months from the end of the brokerage's fiscal year.

### Vincent Leroy Boyles,

Real Estate Broker registered with Montcalm Properties Ltd.

- Boyles' brokerage fiscal year end was July 31, 2021
- RECA sent numerous emails to both Boyles' brokerage and personal email addresses reminding them that the required accounting forms must be filed by November 1, 2021
- each email reminder included clear instructions on what forms were required, a link to RECA's website that explained how to access the forms, and a warning that failure to complete the required forms by November 1, 2021, could result in an administrative penalty
- to date, RECA has not received the brokerage accounting fiscal year end reports
- \$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 this case, the broker failed to file the forms by the deadline despite RECA sending numerous reminders.

### Real Estate Fiscal Year End

## Real Estate Act s.41(d)

A real estate Licensee must fulfill their fiduciary obligations to their clients.

### Joshua Christopher Pearce,

Real estate associate registered with Charles Real Estate Inc. o/a Charles

- on February 23, 2021, Pearce listed a property
- on May 21, 2021, an offer to purchase was accepted by Pearce's client
- the possession date listed in the agreement was July 6, 2021
- the buyer's associate discussed a possession date change to July 2, 2021
- Pearce's client agreed to this change and believed the possession date had been changed
- there was no amendment to the possession date in writing
- Pearce did not explain to their client that the possession date remained July 6, 2021
- the purchase contract allowed for a walkthrough to take place 24 hours prior to possession
- the buyer's associate requested a walkthrough for July 2, 2021, as there had been a hailstorm and they wanted to assess the damage
- Pearce allowed the buyers and their associate to access the property
- Pearce failed to request permission from their client for an early walkthrough and failed to advise the seller the reason for access was to assess potential damage from the hailstorm
- \$1,500

### Learning Opportunity

Licensees must always fulfill their fiduciary obligations to their clients. In the case, the licensee failed to request permission from their client for an early walkthrough and failed to advise their clients the reason for the early access was to assess potential damage from the hailstorm.

### Access to Property

A person is writing in a blue notebook on a wooden desk. The background is blurred, showing a person's hand and a computer monitor. A blue semi-transparent box is overlaid on the image, containing the text "Letters of Reprimand".

# Letters of Reprimand

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

A real estate licensee must provide to the broker in a timely manner all original documentation and copies of original documents related to a trade in real estate.

### Real Estate Associate Broker

- on March 26, 2021, the associate broker completed service documents, and a Country Residential Purchase Contract for their buyer clients
- this was a backup offer
- the associate broker's brokerage had a policy that purchase contracts must be uploaded to the brokerage within 24 hours
- the brokerage expectation included offers to purchase
- the associate broker failed to provide this offer to the brokerage
- the associate broker stated they did not think this was required, as there was never a completed transaction

### 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 an offer to purchase.

Responsibilities and Prohibition —  
Real Estate Associate Brokers and  
Associates

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

Every written service agreement shall provide that any amendment or addition to the terms of the agreement shall be in writing and signed by the relevant parties.

### Real Estate Associate

- in January 2021, the associate entered into an Exclusive Seller Representation Agreement for a property
- the selling price was left blank
- when the Seller determined her selling price, the associate handwrote the price in the agreement
- the associate failed to get the agreement initialed by the seller agreeing to the price term

### Learning Opportunity

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 obtain the seller's initials on the agreement regarding the property purchase price.

Service Agreements – Real Estate Brokerage

## *Real Estate Act Rules s.44(1)*

A real estate licensee must not disclose information regarding a client, property, or transaction unless authorized by the client or required by law.

### Real Estate Associate

- the associate represented the seller for the sale of a property
- the buyers were receiving mail packages for the seller after they took possession
- the buyers wanted to forward the mail and packages to the seller
- the associate provided the buyers with the new address of the seller without their authorization

### Learning Opportunity

Licensees must ensure their clients' personal information remains confidential and only use their information for its intended purpose. Confidential information is any information concerning the client, including the clients' financial or personal situation, the clients' real estate, and the transaction involving the client. The duty to keep client information confidential survives a completed transaction or the conclusion of providing services. In this case, the licensee disclosed confidential information about the client without the permission of the client.

### Protection of Client Information



## *Real Estate Act Rules s.45(1)&(2)*

When providing services, a real estate licensee that refers any person to a service provider must disclose any remuneration or benefit for that referral to their clients, this disclosure must be retained.

### Real Estate Associate

- in February 2018, the associate's clients purchased a property with the intent to renovate it
- in February 2018, the associate referred their girlfriend's contracting company to the buyers to renovate their property
- the associate received a benefit from the referral of the contracting company
- the contracting company used funds received from the contract to transfer funds to the associate's account and made payments on the associate's behalf for their mortgage, credit cards, auto lease and utilities

### Learning Opportunity

A referral is "the act of recommending or directing a person for service, assistance, or business to another person or business." Licensees must disclose in writing that they may receive a fee or compensation for the referral. In this case, the licensee failed to disclose in writing that they may be entitled to receive a benefit for the referral.

Referrals – Licensee requirements

## *Real Estate Act Rules s.57(j)*

A licensee in a sole agency relationship is obligated to provide, in a timely manner, all offers to the seller.

### Real Estate Associate

- on June 5, 2021, the associate entered into an Exclusive Seller Representation Agreement with sellers for the sale of their property
- on June 13, 2021, and July 7, 2021, the associate received offers for the property
- the associate communicated some details of the offers to the sellers via email, but failed to send the completed offers to the sellers for review
- this was a failure to provide the sellers with offers in a timely manner

### **Learning Opportunity**

Licensees must make reasonable efforts to meet their obligations to clients. Licensees have an obligation to make reasonable efforts to communicate important information regarding a transaction, including any offers in a timely manner. In this case, the licensee only communicated details of an offer and did not provide the sellers the complete offer.

### Written Service Agreements

## *Real Estate Act Rules s.43(1)*

A real estate licensee who establishes a client relationship must have a written service agreement in place.

### Real Estate Broker

- the broker had a written service agreement with their seller client for a property
- the agreement ended July 31, 2020
- in September 2020, the broker relisted the property
- the broker believed the client had signed a new service agreement
- at the time, the client had not signed a new service agreement

### **Learning Opportunity**

A written service agreement outlines the roles and responsibilities of the parties, clarifies the expectations of each party, and helps to ensure the client understands their relationship with their licensee. Clarity of roles, responsibilities, and expectations is essential to consumer trust and confidence. The service agreement must be discussed and presented to a prospective client prior to acting on their behalf in a real estate transaction. In this case, the licensee failed to ensure there was a written service agreement in place with the client when they relisted the property.

### Written Service Agreements



## RECA Management

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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)

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