

# Case Summaries

August 15 - September 19, 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.

*The Case Summaries are drafted with a focus on learning opportunities, including issues that may be relevant but not directly related to the case at hand.*

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

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 hand holding a pen writing on a document with a blue folder. The background is blurred, showing what appears to be a meeting or office setting.

# Lifetime Cancellation

## David Stephen Kennedy—Lifetime Cancellation of Real Estate Broker Licence

On August 16, 2022, a hearing panel for the Real Estate Council of Alberta (RECA) ordered the lifetime cancellation of the real estate broker licence of David Stephen Kennedy.

Kennedy was also prohibited from applying for a real estate associate licence for a period of 36 months, and fined \$1,500 in costs associated with RECA's investigations and hearings.

A real estate broker licence is required for individuals who run a real estate brokerage. Each brokerage can only have one broker, who is responsible for all activity within a brokerage. A real estate associate licence is required for individuals who register with a brokerage to carry-out real estate activities on behalf of the brokerage. Each brokerage can have multiple associates.

During the hearing process, Kennedy admitted to 21 breaches of the *Real Estate Act* Rules. Details of the breach can be found in the Hearing Panel Decision summary in the following section of this publication.

*CORRECTION: The Hearing Panel Decision originally indicated a conflict of interest in this case due to Kennedy holding financial interest in Shea Floors of Red Deer. This information was incorrect: Kennedy has never held interest in Shea Floors. The conflict of interest in this case stemmed from a separate joint investment with the owner of Shea Floors in a property that was unrelated to the business itself. This clarification does not impact the outcomes of this case.*

*These facts have been confirmed by all parties and have since been corrected in the published Hearing Panel Decision.*

Kennedy's broker licence has been suspended since December 13, 2019. This was done to protect the public while RECA conducted its investigation into Kennedy's conduct. The Hearing Panel's decision to impose a 36-month prohibition to apply for a real estate associate licence commenced on the date of their original suspension and ends on December 13, 2022. After that date, Kennedy may reapply for an associate licence. Kennedy may at no point apply for a real estate broker licence, due to their lifetime cancellation order.

If Kennedy chooses to apply for an associate licence after December 13, 2022, RECA will first require them to successfully complete all pre-licensing education courses required for new associates.

Kennedy was licensed with RECA beginning in 1997, and was formerly registered with Manor Management Ltd.

A close-up photograph of a person's hand holding a pen over a laptop keyboard. In the background, a pair of glasses is resting on a desk. The image is partially obscured by a blue rectangular overlay containing white text.

# Hearing Panel Decision

# Hearing Panel Decision

David Stephen Kennedy, Real Estate Broker; currently unlicensed; formerly licensed with Manor Management Ltd.

## Issues

The Notice of Hearing submitted by the Registrar outlined four breaches of the *Real Estate Act* and the corresponding Rules:

1. s. 41(b) of the Rules, requiring a real estate licensee to provide competent service to their clients
2. s. 41(d) of the Rules, requiring licensees to fulfill their fiduciary obligations to their clients
3. s. 41(f) of the Rules, requiring licensees to disclose any conflicts of interest
4. s. 42(g) of the Rules, requiring licensees to act in a way that does not undermine public confidence, or the integrity of the industry

## Facts

- on December 19, 2019, Kennedy's broker licence was temporarily suspended under *Real Estate Act* s.53, while RECA investigated complaints of conduct deserving sanction
- pursuant to s.46(1) of the Act, the parties submitted an Admission of Conduct Deserving of Sanction to a Hearing Panel on July 21, 2022, in which Kennedy confirmed breaches of *Real Estate Act* Rules s.41(b),(d), and (f), as well as 42(g), including:
  - improperly reallocating \$118,926.99 in trust account funds
  - failure to disclose a conflict of interest, stemming from a separate investment, when contracting a company to complete work on a property
  - failure to disclose a conflict of interest when contracting a maintenance company owned by Kennedy (APM) to complete work on a property
  - multiple failures to obtain authorization from owners "where required" for various expenses
  - failure to draft a continuing lease agreement for a period from 1995–2017 for a property under management after the previous agreement had lapsed
  - multiple failures to provide leases and accounting documents to new property managers for properties formerly under their management
  - failure to respond to multiple requests from owners for copies of leases for a property under their management
  - failure to inform insurance of a legal claim as required in their management agreement
  - failure to provide timely responses to a property owner from 2017–2019
  - failure to obtain a security deposit, as required, from APM to lease a property under the management of Manor Management Ltd.
  - failure to regularly pay utility bills as APM when leasing a property under the management of Manor Management Ltd., arrears to the sum of \$4000 were owed

- failure to regularly pay rent as APM when leasing a property under the management of Manor Management Ltd., arrears over \$10,000 were owed
- failure to prepare a formal lease for the space used by APM
- multiple failures to get competitive quotes for maintenance work contracted to APM on properties they managed
- sending eviction notices to tenants preemptively without communicating with the owners, who were unable to find new tenants
- failure to properly maintain a property under their management
- failure to remit all collected rent to the property owner
- failure to deal with damage to a property that could've been mitigated if dealt with in a timely manner
- failure to provide balance of funds, security deposits and required financial statements to the new property manager
- improperly using trust funds to offset personal salary, operating shortages, and fund APM

### **Outcome**

The Hearing Panel accepted Kennedy's Admission of Conduct Deserving of Sanction. Further, the Panel found that the Joint Submission on Sanction presented was both reasonable and appropriate, and ordered:

- a lifetime cancellation of Kennedy's broker licence commencing immediately
- a 36-month prohibition for applying for any real estate license commencing at the date of Kennedy's original suspension, December 13, 2019
- successful completion of all education requirements if Kennedy chooses to apply for any other licence
- Kennedy to pay costs in the sum of \$1,500.00

A close-up photograph of a person's hands typing on a laptop keyboard. The image is partially obscured by a large, semi-transparent blue rectangular overlay. The word "Suspension" is written in white, bold, sans-serif font across the middle of the blue overlay. The background shows the laptop keyboard and a person's arm in a dark shirt and brown leather strap.

# Suspension

# Garry Shantz - Brokerage Licence Suspended

On September 12, 2022, RECA's registrar suspended the brokerage licence of Garry Shantz Real Estate Inc.

Under Section 35(2)(b) of the *Real Estate Act* Rules, the registrar may suspend the licence of a brokerage if the registrar receives information that indicates the individual who is registered as the broker has ceased to be the broker.

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

## Learning Opportunity

Brokers may want to consider succession planning for the brokerage as part of their annual planning, to ensure that their brokerage business and client deals can proceed with minimal interruption, in the event that unfortunate and unforeseen circumstances arise.

[When Your Real Estate Brokerage Shuts Down](#)

A person is sitting at a wooden desk, working on a laptop. The person's hands are visible on the laptop keyboard and trackpad. In the foreground, a pair of black-rimmed glasses is on the desk. To the right, a tablet is open. The background is a bright, out-of-focus indoor setting with a green plant and a window. A blue semi-transparent rectangle is overlaid on the image, containing the text.

# Administrative Penalties

## *Real Estate Act s.38(4)(a)*

A person who is required to answer the questions of a person conducting an investigation must cooperate, and promptly respond.

### Brieanne Lee Doucet,

Mortgage associate, not currently licensed

- in May 2020, an investigation was opened into Doucet's conduct as a licensee, due to allegations raised of fraudulent conduct
- numerous attempts were made to contact Doucet by email, phone, and their registered mailing address
- on May 19, 2022, a demand for information was sent to Doucet's business address
- the demand made clear that failing to cooperate may lead to an Administrative Penalty, and had a deadline of June 10, 2022
- Doucet did not provide the requested information
- \$10,000 Administrative Penalty was issued

### Learning Opportunity

Licensees and individuals are required under the *Real Estate Act* to cooperate with an investigation. Cooperation means providing truthful and complete responses in a timely and constructive manner. In this case, the licensee failed to cooperate with an open investigation. The licensee was contacted numerous times and continually failed to provide the information requested. These actions were failures to cooperate with an investigator.

[Guide to Investigations for Licensees](#)

[Cooperate with the Real Estate Council of Alberta](#)



# Letters of Reprimand

## Real Estate Act Rules s.80.4(1)(e)

A property management broker must ensure there is adequate supervision of associates, and employees who perform duties on behalf of that brokerage.

### Real estate broker

- in April 2021, clients entered into a Property Management Agreement with 1983546 Alberta Ltd., o/a Re/Max Platinum Realty to manage their property
- the unauthorized employee at Re/Max Platinum Realty, assisted the broker with renting the property and dealing with the client
- verbal instructions were given by the client to rent the property, including a term that the tenants would be responsible for the utilities
- the client also requested the property be leased between April and September 2021
- on April 9, 2021, the unauthorized employee drafted a Residential Lease Agreement for Baker's review with the term between April 10, 2021, through September 30, 2022
- they also drafted a term in the agreement that the utilities were to be covered by the client
- these terms were errors and did not reflect the client's instructions
- when reviewing the Lease Agreement, the broker failed to notice the errors in the lease

### Learning Opportunity

Property management brokers must ensure there is adequate supervision of associates and employees who perform duties on behalf of that brokerage. In this case, the broker failed to adequately review the terms of a contract. It was the broker's responsibility to review the lease drafted by their unlicensed assistant. Failing to adequately review the contract led to errors in the terms of the contract.

Assistants – Real Estate Brokerage

## *Real Estate Act Rules s.41(e)*

A licensee must ensure their role is clearly understood by their clients and third parties.

### Real estate associate

- on January 13, 2022, the associate was communicating with a client interested in purchasing properties for investment
- the associate discussed pricing and purchasing properties with this client
- one of these properties was a foreclosure property where the client expressed an interest in the property
- in communications with the client, the associate stated they could act as a facilitator for the transaction. The purchase price and commissions were discussed at this time
- the associate did not clarify what their role was or what services they would be providing to the client

### **Learning Opportunity**

Licensees must ensure their role is clearly understood by their clients, and all third parties. In this case, the licensee failed to clarify their role or the services they would be providing to their client. If a licensee intends to represent or assist a person in a real estate transaction, they must discuss their potential relationship options with the client. Do not assume a client understands your role and responsibilities if they do not ask questions. A licensee must explain their obligations and what services they will provide.

Clients – Real Estate Brokerage



## RECA Management

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

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