

Governing body ratchets up realtor discipline

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The Real Estate Council of British Columbia has handed out some of its stiffest penalties for the transgressions of realtors in a year that has been busier than 2007's record pace for disciplinary action.

As of this week, the Real Estate Council, the self-regulatory body that governs the industry, has handed down 56 disciplinary decisions, compared to 52 for the first seven months of 2007.

Among the decisions, the council issued suspensions to 29 licensed realtors or their firms, including:

- The cancellation of Richmond property manager Randall Charles Frederick Lewis's managing broker's licence for professional misconduct relating to the failure to keep proper books, failing to respond to clients' requests for documents, and failing to file a required accounting report to the council.
- The cancellation of property manager Kim Wayne Lem's managing broker's licence for professional misconduct related to failure to maintain proper books, and failing to immediately rectify the negative balance in a trust account.
- A two-year suspension of Nanaimo realtor Allan Joseph Lupton's managing broker's license for professional misconduct related to his failure to actively supervise activities in the office, failing to keep separate trust ledgers and ensure his brokerages realtors complied with council rules.
- A one-year suspension of strata property manager Daniel Arthur Bourke's licence for professional misconduct related to his failure to maintain proper books, permitting payments out of a trust account resulting in a negative balance, and misappropriating funds from a trust account by making withdrawals for purposes other than those allowed under the Real Estate Services Act.

"We've raised the bar," Maureen Coleman, senior compliance officer for the Real Estate Council, said in an interview.

"There is no doubt that in the disciplinary decisions over the last few years, year-over-year, penalties have increased for licensees."

The council has been building up precedents for its rulings since taking over full regulatory authority for the industry in 2005 from the B.C. Financial Institutions Commission.

Coleman added that over the Real Estate Council's last reporting year, which ran from July 1, 2007, to June 30, her compliance department received 563 written complaints, versus 543 for the year ending June 30, 2007, which was a record at that time.

The complaints added up during a year when the council also had a record 20,310 realtors licensed in B.C. That compares with a low of 12,678 licensees in 2001-02.

However, Coleman said the council still does not find that the inexperience of new licensees factors into the number of complaints and disciplinary measures being meted out.

Late last year when The Vancouver Sun reported on realtor discipline, Coleman said a rising number of cases had more to do with the torrid pace of transactions taking place in the market before it began to cool in 2007.

Coleman said that is still the case.

"The longer you're in business, and the more productive you are, it may be a possibility that sooner or later something is going to go awry," she added, "even with the best of intentions."

Coleman said rising expectations of professionalism, and awareness of the council's role among consumers, also continues to prompt complaints.

Realtors, Coleman said, "are trusted advisers with specialized expertise, and the consumer quite rightly expects that when he's dealing with a licensee, he should be delivered a professional service."

Coleman said "dual agency" -- when realtors act for both the buyer and seller in a transaction -- continues to be a particular concern that shows up in disciplinary actions.

Transgressions of dual-agency rules were behind one of the more serious penalties handed down this year, a 180-day suspension of Langley realtor Kenneth Edward Heppner's licence.

Heppner, while working at Royal LePage Wolstencroft realty, "committed acts of deceptive dealing," related to his role as a dual agent in six transactions over 2005 and 2006, which amounted to professional misconduct in the eyes of the Real Estate Council.

In several transactions, Heppner did not inform the property sellers in a timely fashion that the buyer was assigning the sale contract to another party, and misled his managing broker by saying he had no role in assigning the contracts when he did offer some assistance by providing the assignment document that the buyer used.

In one instance, Heppner advised a buyer to deposit with his bank a \$200,000 cheque, which was not the certified cheque required, and wound up being returned because of insufficient funds.

The decision said Heppner testified that, while he knew his duties as a dual-agent, he acknowledged that he "was sloppy and failed to pay proper attention to detail," and that "his conduct was substandard," which he resolved to correct.

Coleman said about 60 per cent of complaints are resolved administratively. Council investigators can decide there was either no offence, the commission does not have jurisdiction, or it can issue a warning letter when transgressions were minor and did not harm a consumer.

For the cases that do proceed to investigation and review by a council complaints committee, Coleman said she is satisfied that they serve an educational function for other realtors.

"When we publish disciplinary decisions, we're hopeful that that raises the bar and makes licensees very mindful of what their professional obligations are," she added.

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Discipline delineated

The Real Estate Council of B.C. has handed down some of its strictest penalties this year to realtors who have violated the provincial Real Estate Services Act and regulations.

Decisions handed down: 56

Licence cancellations: 3*

Reprimands to individuals

or brokerages: 42

Suspensions of individuals

or brokerages: 29

*(includes the brokerage and

individual licence in one instance)

Breakdown of suspensions

7 days: 12

14 days: 3

21 days: 5

28 days: 1

30 days: 1

45 days: 2

60 days: 1

180 days: 2

1 year: 1

2 years: 1

Source: Real Estate Council of B.C.

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