

## REAL ESTATE COUNCIL OF ALBERTA

### NOTICE OF ADMINISTRATIVE PENALTY

Brock Adam Tokar, Real Estate Associate  
Sutton Group Grande Prairie Professionals  
201, 11731 - 105 Street  
Grande Prairie, AB  
T8V 8L1

October 16, 2013

In accordance with section 83 and the Bylaws of the *Real Estate Act* R.S.A. 2000 c. R-5, (Act), the Executive Director of the Real Estate Council of Alberta (RECA) has determined that there is sufficient evidence of conduct deserving of sanction in regard to you, Brock Adam Tokar at all relevant times a Real Estate Associate, registered with 697567 Alberta Ltd. O/A Sutton Group Grande Prairie Professionals, to assess an Administrative Penalty. The evidence giving rise to the Executive Director's decision is as follows.

In entering into a contract to sell your own property, you agreed to act as a representative for buyers G.G. and A.G. At the start of the transaction you did not advise them to seek independent legal advice and accepted an offer to purchase that you drafted which contained no conditions protecting them. As a result, when the buyers were unable to obtain financing, you informed them that they had forfeited their deposits.

The Executive Director is of the opinion that the above noted conduct is in violation of 41(d) which sets out that "*Industry members must fulfill their fiduciary obligations to their clients*".

In accordance with section 39 and section 83 of the Act and Part 4 of the Act's Bylaws, an Administrative Penalty in the amount of **\$2,500** has been assessed against you for this contravention.

#### **Aggravating Factors:**

- You did not have your clients seek independent legal advice even when the first contract did not complete due to a financing issue.
- You did not put the deposit funds in trust per the contract.

- You have still not returned the deposit funds to the buyers despite acknowledging that you should not have represented them in this attempted transaction.
- You did not terminate the original contract before entering into a secondary contract which leaves the buyers responsible under two contracts for one property.
- You did not seek any advice from your broker when your client requested their deposit funds back.

**Mitigating Factors:**

- You have no discipline history with RECA.
- You acknowledge making errors in judgment in your execution of this transaction.

Payment of this Administrative Penalty shall be accepted by the Executive Director as complete satisfaction of the amount of the penalty and no further proceedings under Part 6 of the Act will be taken against you in respect of the contravention. A person who pays an Administrative Penalty may not be charged under the Act with an offence in respect of those contraventions.

This sum of **\$2,500** is payable to RECA within thirty (30) days of the date of issuance of this Notice of Administrative Penalty. If you fail to pay the amount set out in this notice, the Executive Director may commence legal action against you to recover the amount owing in respect of the Administrative Penalty as a debt due to RECA.

If you dispute this Notice of Administrative Penalty in accordance with section 83.1 of the Act, you may appeal it to a Hearing Panel. You will be given a full opportunity consistent with procedural fairness and natural justice to present evidence before the Hearing Panel and make representations in relation to the contravention.

If you have any questions in regard to this Notice of Administrative Penalty, please contact Ryan DeLuca, Professional Conduct Review Officer at RECA.

DATED this 15<sup>th</sup> day of October, 2013.

**REAL ESTATE COUNCIL OF ALBERTA**

Per: *Charles Stevenson*, for

Bob Myroniuk  
Executive Director

cc: Jason Scott, Real Estate Broker  
Sutton Group Grande Prairie Professionals