

# REAL ESTATE COUNCIL OF ALBERTA

## NOTICE OF ADMINISTRATIVE PENALTIES

TO: Lotus Pacific Management (Alberta) Inc., Brokerage  
201-17420 Stony Plain Road  
Edmonton, AB T5S 1K6

In accordance with sections 39 and 83 of the Real Estate Act, and with Part 4 of the Bylaws of the Real Estate Act, the Executive Director of the Real Estate Council of Alberta has determined that there is sufficient evidence of conduct deserving of sanction (re: File Numbers 943-00, 944-00 and 952-01) in regard to the conduct of Lotus Pacific Management (Alberta) Inc. to assess Administrative Penalties. The evidence giving rise to the Executive Director's decision is as follows:

- 1 On February 9, 1998, Lotus Pacific Management Inc. was incorporated in the Province of British Columbia. This corporation was licensed to trade in real estate within the Province of British Columbia. On April 16, 1999, Lotus Pacific Management Inc. incorporated 827131 Alberta Ltd.. On May 31, 1999, 827131 Alberta Ltd. changed its name to Lotus Pacific Management (Alberta) Inc. (hereafter, "Lotus").
- 2 On June 15, 1999, Lotus acquired the property management portfolio of Argon Group Ltd. (hereafter, "Argon"). Argon did not formally assign their Property Management Agreements to Lotus. Lotus did not obtain signed management agreements in relation to all of these properties. With this acquisition, Lotus began to manage the properties of owners such as: 1) E.P. - units #44 & #45 at Huntcliffe Gardens (Calgary); 2) A.T. - unit #64 at Huntcliffe Gardens (Calgary); and 3) M.C. - unit #403 at Strathcona House (Edmonton). E.P., A.T. and M.C. each did not have written property management agreements with Lotus.
- 3 Although Lotus was granted a licence by RECA to trade in real estate in the Province of Alberta on October 19, 1999, after this date (on numerous occasions) Lotus continued to send correspondence on letterhead which identified the B.C. parent corporation, rather than "Lotus Pacific Management (Alberta) Inc.". As well, Lotus continued to enter into (numerous) Tenancy Agreements under the name of the parent corporation, rather than the Alberta entity.
- 4 During meetings which occurred on December 4 and 5, 2000, in response to concerns held by RECA that accounting records (particularly in Calgary) were not current and that a condominium corporation had filed a garnishee summons against a trust account operated by Lotus (due to the fact that the condominium corporation had not received any funds or statements for several months), Lotus

agreed to provide RECA with a written undertaking, by December 11, 2000, as to how their records would be brought up to date.

- 5 On December 7, 2000, Lotus gave notice to their clients that they would be leaving the Province of Alberta on December 15, 2000. This was less notice than was required as per signed management agreements. As they had left unpaid a number of operating expenses (such as payments of rent to owners) for various months, it appears that Lotus may have been planning to leave Alberta for several months prior to the date of this notice.
- 6 On December 11, 2000, (rather than providing RECA with a written undertaking as to how their records would be brought up to date, pursuant to their December 4 and 5, 2000 commitment), Lotus provided RECA with notice that they were closing their Alberta operation, effective December 15, 2000.
- 7 At a December 13, 2000 meeting, (Lotus President) S.J. informed Joseph FERNANDEZ (RECA Investigations) and Gerry DRYSDALE (RECA Compliance Audit) that she was preparing to move the Alberta trust moneys and brokerage records to the British Columbia operation. It is estimated that, due to this comment made by S.J. , the amount of trust funds which could be in jeopardy (by the move of Lotus to the Province of British Columbia) was approximately \$1,700,000.00.
- 8 Based on the contents of the December 11, 2000 letter to RECA, the comments made by S.J. to FERNANDEZ and DRYSDALE on December 13, 2000, and the fact that Lotus had not provided RECA with a written undertaking as to how their records would be brought up to date (pursuant to their December 4 and 5, 2000 commitment), RECA froze the trust accounts of Lotus on December 11, 12, 14 and 18, 2000.
- 9 It was learned that Lotus had deducted management fees (in advance) for the entire month of December, 2000. RECA's freeze did not completely prevent these deductions from being made on all Lotus accounts.
- 10 In late 2000 (and early 2001), BAYVIEW REAL ESTATE MANAGEMENT INC. (properly licensed to trade in real estate in the Province of Alberta) took over several Lotus accounts. Copies of documents, etc. in the Lotus files (which BAYVIEW obtained from Lotus in the transfer, and thereafter provided to RECA) show that, between (at least) November, 1999 and February, 2001, Lotus was trading in real estate under the parent corporation's name. As well, Residential Tenancy Agreements, Lease Renewal Agreements, inspection reports and various pieces of correspondence show the parent corporation as agent of the landlord or property manager.
- 11 It was not until approximately January 15, 2001 that Lotus provided RECA with the first of the Edmonton records. On approximately February 15, 2001, Lotus

provided RECA with a larger number of (but not the entire outstanding balance of) the trust records. As of December, 2002, no records with regard to Lotus' Calgary activities had been received by RECA.

- 12 In May, 2001, KPMG became a court-appointed trustee for Lotus. KPMG informed RECA that KPMG did not receive any reconciliations from Lotus until at least three months after its appointment as trustee in May, 2001. In summary, data provided by KPMG to RECA regarding Lotus accounts indicates actual trust shortages, resulting in payouts to owners in amounts which were significantly lower than what they were actually owed by Lotus.
- 13 The Affidavit of FERNANDEZ sworn April 9, 2001 states that (on December 4 or 5, 2000) he had been informed by S.J. that: 1) one of Lotus' Calgary clients had taken legal action against them as the owner had not received scheduled payments from Lotus for several months; 2) there were two or three other Calgary clients who had also not received payments from Lotus for at least two months (October, 2000 and November, 2000); and 3) the reason for the delay was because reconciliations had not been completed; 4) she was concerned that there may be insufficient funds to cover client payments as well as management fees; 5) by December 15, 2000, she would advise RECA of Lotus' plan to complete the reconciliations, but that if RECA did not approve this plan, Lotus would consider ceasing operations in Alberta and returning to British Columbia.
- 14 The Affidavit of David POMEROY (RECA Compliance Audit) sworn April 9, 2001 states that he had been informed by J.C. (the broker for Lotus from October 1, 2000 to January 31, 2001) that: 1) reconciliations were not being prepared as required; 2) reconciliations for Edmonton properties were not completed until mid-February, 2001; and 3) as of April 9, 2001, no records had been completed regarding the Calgary properties.
- 15 During the course of RECA's investigation, similar complaints were heard from E.P., A.T. and M.C. : 1) Lotus managed their properties without a written management agreement or written terms of trust; 2) Lotus was late in providing monthly statements to the owners; 3) Statements were sometimes incomplete, inaccurate, or (in some cases) not provided at all; 4) funds were improperly allocated or deposited; and 5) Lotus did not release funds or documents upon ceasing their management activities.
- 16 Regarding the properties owned by E.P. , beginning in the spring of 2000 and continuing for several months until October, 2000, the monthly statements sent by Lotus to E.P. began to show E.P.'s units to be in a deficit position (instead of a remittance of the rent collected by Lotus, net of expenses). E.P.'s tenants had informed her that no work had been done on her units during this period of time, and yet these types of expenses continued to be deducted on a monthly basis. Lotus did not respond to E.P.'s requests for reports or copies of invoices

regarding expenses and work being done to her units. E.P. also complained that, after Gateway West Management Corporation took over management of her properties on October 1, 2000, Lotus continued to collect rents from E.P.'s tenants for the months of October and November, 2000 and failed to thereafter forward the rental income to either E.P. or her new property manager. Monthly condominium fees went unpaid since, in their failing to remit the collected rental moneys to the new property management company, Lotus also failed to remit the monthly condominium fees accordingly. As well, (on several occasions) E.P. instructed Lotus to forward funds (including security deposits) and documents relating to her units to Gil Management (hired as a replacement for Gateway West Management Corporation). Lotus failed to do so. E.P. also complained that Lotus was late in sending monthly statements to her, monthly statements were often incomplete and/or inaccurate, and funds collected by Lotus were not properly allocated.

- 17 Regarding the property of A.T. , he complained of the deficits appearing in monthly account statements received from Lotus for the months of June to November, 2000. As of June 2, 2001, A.T. had yet to receive an explanation from Lotus indicating why he did not receive any accounting or rental income for September through November, 2000.
- 18 Regarding the M.C. property, beginning with the first monthly statement which Lotus sent to him (in June, 1999), M.C. noticed irregularities in relation to the revenues and expenses reported. Continuing for several months until November, 2000, the monthly statements sent by Lotus showed M.C.'s unit to be in a deficit position (instead of remitting to M.C. the rent collected by Lotus, net of expenses). In September, 2000, M.C. received a statement from Lotus with "inflated" management fees (which were not part of the trust arrangement that he had with Argon). M.C. complained of improper charges reflected in Lotus' accounting and reporting, and generally their poor business methods over the preceding two years.

The Executive Director therefore believes that the conduct of Lotus Pacific Management (Alberta) Inc. was in contravention of:

- a) Sec. 25(1)(d) of the Real Estate Act [three contraventions (re: E.P., A.T. and M.C. ), at \$1,500.00 each = \$4,500.00 in Administrative Penalties];
- b) Sec. 25(2) of the Real Estate Act [three contraventions (re: E.P., A.T. and M.C. ), at \$1,500.00 each = \$4,500.00 in Administrative Penalties];
- c) sec. 20(a) of the Real Estate Act Rules (\$1,000.00 Administrative Penalty);

- d) sec. 20(b) of the Real Estate Act Rules [three contraventions (re: E.P., A.T. and M.C. ), at \$1,000.00 each = \$3,000.00 in Administrative Penalties];
- e) sec. 20(c) of the Real Estate Act Rules (\$1,000.00 Administrative Penalty);
- f) sec. 38(1) of the Real Estate Act Rules [three contraventions (re: E.P., A.T. and M.C. ), at \$500.00 each = \$1,500.00 in Administrative Penalties];
- g) sec. 38(2)(a) of the Real Estate Act Rules [three contraventions (re: E.P., A.T. and M.C. ), at \$500.00 each = \$1,500.00 in Administrative Penalties];
- h) sec. 38(2)(b) of the Real Estate Act Rules (\$500.00 Administrative Penalty);
- i) sec. 39 of the Real Estate Act Rules [three contraventions (re: E.P., A.T. and M.C. ), at \$500.00 each = \$1,500.00 in Administrative Penalties];
- j) sec. 42(4) of the Real Estate Act Rules (\$1,000.00 Administrative Penalty);
- k) sec. 50(1)(a) of the Real Estate Act Rules (\$500.00 Administrative Penalty);
- l) sec. 50(2) of the Real Estate Act Rules (\$500.00 Administrative Penalty); and
- m) sec. 53 of the Real Estate Act Rules (\$500.00 Administrative Penalty).

and is conduct deserving of sanction.

In accordance with sections 39 and 83 of the Real Estate Act and Part 4 of the Bylaws of the Real Estate Act, Administrative Penalties in the total amount of **\$21,500.00** have been assessed against Lotus Pacific Management (Alberta) Inc. for these contraventions. Payment of this total amount shall be accepted by the Executive Director as complete satisfaction of these Administrative Penalties and no further proceedings under Part 6 of the Real Estate Act will be taken against Lotus Pacific Management (Alberta) Inc. in respect of these contraventions.

This sum is payable to the Real Estate Council of Alberta within thirty (30) days of the date of issuance of this Notice. If Lotus Pacific Management (Alberta) Inc. fails to pay the total amount set out in this notice, the Executive Director may commence legal action against Lotus Pacific Management (Alberta) Inc. to recover the amount owing in respect of these Administrative Penalties as a debt due to the Real Estate Council of Alberta.

If Lotus Pacific Management (Alberta) Inc. disputes this Notice of Administrative Penalty, in accordance with s. 35 of the Bylaws of the Real Estate Act, Lotus Pacific

Management (Alberta) Inc. may appeal it to a Hearing Panel. Lotus Pacific Management (Alberta) Inc. 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 these contraventions.

If you have any questions in regard to this Notice, please contact Kenneth Andrews, Case Officer at the Real Estate Council of Alberta.

DATED this 9<sup>th</sup> day of **September, 2003**.

**REAL ESTATE COUNCIL OF ALBERTA**

Per: "Bob Myroniuk"  
Bob Myroniuk  
Executive Director

cc: Sugimoto and Company  
Barristers and Solicitors  
204-2635 37<sup>th</sup> Avenue NE  
Calgary, AB T1Y 5Z6  
Attention: L.H.

Solicitors for the brokerage, Lotus Pacific Management (Alberta) Inc.