

BC FINANCIAL SERVICES AUTHORITY

IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*
SBC 2004, c 42 as amended

AND

IN THE MATTER OF

LEWIS NEIL RATCLIFF
(172363)

AND

LEWIS RATCLIFF PERSONAL REAL ESTATE CORPORATION
(172363PC)

AMENDED NOTICE OF DISCIPLINE HEARING

To: Lewis Neil Ratcliff
Lewis Ratcliff Personal Real Estate Corporation
c/o Island Group Service Inc dba
Engel & Volkers Vancouver Island (Victoria)
137-1325 Bear Mountain Parkway
Victoria, BC V9B 6T2

TAKE NOTICE that the Superintendent of Real Estate (the "Superintendent") of the BC Financial Services Authority ("BCFSA") will hold a discipline hearing under Part 4 of the *Real Estate Services Act* ("RESA") on **May 28 to May 30, 2023 commencing at 9:30 am** in the virtual Hearing Room at BCFSA's offices located at **600 – 750 West Pender Street, Vancouver, British Columbia** to determine whether your conduct contravened the RESA, the *Real Estate Services Regulation* (the "Regulation"), or the *Real Estate Services Rules* (the "Rules").

AND TAKE NOTICE that the allegations against Lewis Neil Ratcliffe and Lewis Ratcliff Personal Real Estate Corporation are as follows:

1. Between April 1, 2017 to April 31, 2018, you committed professional misconduct within the meaning of section 35(1)(a) and/or 35(1)(d) of the RESA in that, while licensed as a trading representative at Engel & Volkers Vancouver Island (Victoria), when you:
 - a. failed to advise your client, YK, the seller, to seek professional advice on matters outside of your expertise in respect of the rezoning of property prior to the seller entering into and/or amending a contract of purchase of sale ("CPS") for a property located at [Property 1], North Saanich, BC (the "Property") that included a condition precedent that the sale was subject to the Property being rezoned contrary to section 30(d) of the Rules (previously Rules, s 3-3(d)) [*advise client to*

seek professional advice on matters outside expertise] and/or section 34 of the Rules (previously Rules, s 3-4) [*act with reasonable care and skill*];

- b. demonstrated incompetence in preparing and amending a contract of purchase of sale for the Property that contained multiple errors, conflicting subject clauses and open-ended clauses contrary to section 34 of the Rules (previously Rules, s 3-4) [*act with reasonable care and skill*], including by:
 - i. failing to include typical contract language for a transaction involving rezoning to ensure the parties clearly understood their respective commitments and obligations;
 - ii. inserting a condition precedent (clause 7) in the CPS addendum for the Property with regard to the buyer receiving approval from the City of North Saanich to rezone the Property that was open-ended in that it did not include a date by which the buyer needed to provide notice that the condition had been satisfied or waived;
 - iii. inserting an amendment to the CPS for the Property under the “Amendment to Remove Subjects Form” on April 22, 2017 contrary to the form’s purpose;
 - iv. listing both conditions precedent being removed and not being removed under the “Amendment to Remove Subjects Form” on April 22, 2017 contrary to the form’s purpose;
 - v. amending the CPS to include a condition precedent which adjusted the completion date, adjustment date and possession date upon rezoning approval which, when read together with clause 7 of the CPS, could permit the buyer to extend the completion date indefinitely or could render the CPS void for uncertainty;
 - vi. failing to ensure that the buyer and seller initialed a modification by interlineation to the language of clause 8 under the “Amendment to Remove Subjects Form” on April 22, 2017 prior to executing the form ;
 - vii. inserting a clause (clause 6) in the CPS addendum for the Property, which reserved the right for the buyer to assign the CPS without notice to seller which was contrary to an assignment restriction in section 20A of the CPS; and/or
 - viii. failing to properly complete the required limited dual agency relationship licensee information in section 21 of the CPS regarding Agency Disclosure (Part C);
- c. failed to properly complete the limited dual agent section of the “Disclosure of Remuneration Form” as the representative for both the buyer and seller in in Part B (Disclosure of Commissions) as required in the transaction pursuant to section 57 of the Rules (previously section 5-11 of the Rules), contrary to section 34 of the Rules (previously Rules, s 3-4) [*act with reasonable care and skill*];
- d. failed to provide a “Notice to Seller Requiring Assignment Terms” form to YK, the seller, contrary section 8.2(4) of the Regulation and section 34 of the Rules (previously Rules, s 3-4) [*act with reasonable care and skill*];

- e. prior to entering into a dual agency with YK, the seller, failed to adequately explain to and/or ensure the seller understood and/or was capable of understanding the consequence of changing the relationship with you from designated agency to dual agency and/or failing to recommend that the seller seek professional advice to ensure proper understanding of the agency relationship prior to entering into a dual agency with you contrary to section 34 (previously Rules, s 3-4)*[act with reasonable care and skill]* and/or section 30(a) of the Rules (previously Rules, s 3-3(a) *[act in the best interests of the client]*; and/or
- f. failed to act with impartiality while serving as a limited dual agent, contrary to section 34 of the Rules (previously Rules, s 3-4) *[act with reasonable care and skill]* **including** by:
 - i. drafting and inserting an amendment to the CPS which was favorable to the buyer and could permit the buyer to extend the completion date indefinitely and hold payment of the deposit without adequately explaining the consequence of the amendment to YK, the seller; failing to provide information to the seller regarding the risks to the seller in the event the CPS was assigned considering the assignment clause and/or failing to suggest that the seller obtain professional advice regarding the amendment adjusting the completion date and/or the assignment clause; and/or
 - ii. between July 2017 and April 2018 failing to communicate with YK, the seller, to provide information regarding the rezoning of the Property and/or the status of the transaction.

AND FURTHER TAKE NOTICE that if the Superintendent finds you committed professional misconduct, the Superintendent must make an order against you, and may also order you to pay enforcement expenses incurred by BCFSa, under sections 43 and 44 of the RESA.

AND FURTHER TAKE NOTICE that if you do not attend the discipline hearing, the Superintendent may proceed with the discipline hearing in your absence and may make findings and orders under sections 43 and 44 of the RESA without further notice to you.

AND FURTHER TAKE NOTICE that you are entitled, at your own expense, to be represented by legal counsel and to participate in the discipline hearing.

Dated this **12th day of February**, 2024 at the City of Vancouver, British Columbia.

Superintendent of the BC Financial Services Authority

“Original signed by Chris Biscoe”

Chris Biscoe
Delegate of the Superintendent of Real Estate
Province of British Columbia