

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

AND

IN THE MATTER OF  
TERESA MARIE BERGE  
(136581)

CONSENT ORDER

RESPONDENT: Teresa Marie Berge, Representative (136581), while licensed with Hugh & McKinnon Realty Ltd

DATE OF CONSENT ORDER: December 16, 2020

CONSENT ORDER REVIEW COMMITTEE: S. Heath  
S. Sidhu  
C. Ludgate

COUNSEL: Jessie Meikle-Kahs, Legal Counsel for the Real Estate Council of BC  
Scott Twining, Legal Counsel for the Respondent

PROCEEDINGS:

On December 16 2020, the Consent Order Review Committee (“CORG”) resolved to accept the Consent Order Proposal (the “Proposal”) submitted by Teresa Marie Berge (“Ms. Berge”).

**WHEREAS** the Proposal, a copy of which is attached hereto, has been executed by Ms. Berge.

**NOW THEREFORE**, having made the findings proposed in the attached Proposal, and having found that Ms. Berge a committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* (“RESA”) and acted contrary to sections 3-3(a) and 3-4 of the Rules made under the RESA, pursuant to section 43 of the RESA the CORC orders that:

1. Ms. Berge pay a discipline penalty to the Council in the amount of \$5,000 within two (2) months following the end of the Suspension Period.
2. Ms. Berge pay enforcement expenses to Council in the amount of \$1,500 within two (2) months following the end of the Suspension Period.

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If Ms. Berge fails to comply with any term of this Order, the Council may suspend or cancel her licence without further notice to her, pursuant to sections 43(3) and 43(4) of the RESA.

Dated this 16th day of December, 2020 at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

“Sandra Heath”

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Sandra Heath  
Consent Order Review Committee

Attch.

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

**AND**

**IN THE MATTER OF**

**TERESA MARIE BERGE  
(136581)**

**CONSENT ORDER PROPOSAL BY TERESA MARIE BERGE**

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**BACKGROUND AND FACTS**

This Consent Order Proposal (the "Proposal") is made by Ms. Berge to the Consent Order Review Committee ("CORC") of the Real Estate Council of BC (the "Council") pursuant to section 41 of the *Real Estate Services Act* ("RESA").

For the purposes of the Proposal, Ms. Berge and the Council have agreed upon the following facts:

1. Ms. Berge (136581) has been licensed as a representative for trading services since 2002.
2. Ms. Berge was at all times material to this matter licensed with Hugh & McKinnon Realty Ltd. (X001508).
3. On or about March 27, 2017, ST, a licensee at another brokerage listed for sale a residential property located at XX-XXXX West 40<sup>th</sup> Avenue, Vancouver, B.C. (the "Property"). The Property was a penthouse condominium unit in a five story walk-up building in the Kerrisdale neighbourhood of Vancouver. The Property had been constructed in the late 1970s.
4. Ms. Berge would come to represent the buyer of the Property.
5. The MLS feature sheet prepared by the listing agent described the Property as a "one bedroom", "two level loft" with a finished floor area of 792 square feet over two floors. Specifically, the MLS feature sheet stated as follows:

This chic one bedroom loft oozes with character & style. Light filled suite with vaulted 12' ceilings, skylights, and added spotlights...Completely redesigned featuring new kitchen & bath, lush carpets throughout and a beautiful spiral staircase with reclaimed barn wood!

6. The "reno." year listed in the MLS feature sheet noted that renovations to the Property had occurred in 2016.

7. The seller completed a property disclosure statement, the terms of which were incorporated into the Purchase and Sale Agreement, which included the following statements by the seller:

**3. BUILDING Respecting the Unit and Common Property**

A. Has a final building inspection been approved or filed occupancy permit been obtained? -- Seller indicated "yes".

...

E. Are you aware of any additions or alterations made without a required permit; e.g., building, electrical, gas, etc.? – Seller answered "no".

8. Ms. Berge's client, the buyer, attended an open house at the Property on April 15, 2017 (the Saturday of the Easter Long Weekend). Ms. Berge did not attend with her client. Following the open house, Ms. Berge's client decided to make an offer to purchase the Property. The buyer advised Ms. Berge that she did not want to lose the Property to another buyer and she instructed Ms. Berge to present a subject free offer.
9. On April 15, 2017, Ms. Berge texted the listing agent and asked to be provided with information about the Property. The listing agent ("ST") replied and provided Ms. Berge with a dropbox link to documents concerning the Property that he had put together. Included in the documents provided by ST to Ms. Berge were:
- A "Void Space Review" document that had been prepared in 2011 for the strata council, which indicated that the loft space in the Property was not authorized; and
  - The registered strata plan for the Property, which showed its authorized square footage as being only 568 square feet.
10. ST told Ms. Berge that she should pay particular attention to the Strata President's letter of February 2, 2015 and the Void Space Review of February 22, 2011. The Strata President's letter contained the following relevant information regarding the Void Space Review:
- The City of Vancouver was not surprised that the as built structure was different from what they had approved.
  - There are other buildings that have unpermitted/ non-compliant spaces.
  - The Engineering Department was prepared to approve the void spaces with the caveat that the spiral staircases in some units would have to be modified in order to meet Code.
  - The Strata's legal counsel had been asked to opine on a process for resolving discrepancies in unit entitlement.

11. Prior to preparing the offer to purchase the Property, Ms. Berge reviewed with her client the documents that had been provided by ST and advised her client that the Property included unauthorized space. The Contract of Purchase and Sale, dated April 15, 2017, specifically stated:

*"Buyer is aware that the property contains unauthorized square footage, and is subject to ongoing discussion by the strata council seeking a resolution to amend the square footage and therefore insurance and strata fees for the property may increase at a future date."*

*"Buyer is aware that some aspects of the unauthorized square footage may not be to current city building codes, and that the buyer may, in the future, be required to modify these aspects"*

*"Buyer acknowledges having received and being satisfied with the Void Space Review dated February 23, 2012 and the President's Letter in the AGM dated February 2, 2015."*

*The Buyer & the Seller have been advised to seek independent legal and/or professional advice to this Contract of Purchase and Sale. ..."*

13. In addition to the foregoing the Contract of Purchase and Sale contained an acknowledgement that the buyer had been advised to have a professional home inspection but had declined.
14. The transaction completed and title changed to the buyer on June 19, 2017. Ms. Berge's client paid \$585,500 for the Property.
15. Shortly after the sale closed and the buyer took possession of the Property, the buyer was required by the City of Vancouver to remove the spiral staircase and completely close off access to the loft area of the Property. These changes effectively converted the one-bedroom loft into a 568 square foot studio apartment.
16. When she was advising the buyer about the unauthorized space in the Property, Ms. Berge says that she reviewed the records that she was provided by the listing agent, including the Strata Council minutes, the Form B, the Property Disclosure Statement, and the Strata Plan. Ms. Berge says that there was nothing in the records she received which indicated to her that the City would not approve the unauthorized space or require the unauthorized space to be closed off. Ms. Berge reviewed the documents and discussed the issues with the unit with her client. During these discussions, Ms. Berge specifically alerted her client to the fact that the loft space in the unit was unauthorized and that the spiral staircase did not comply with the Building Code.
17. Ms. Berge alerted the buyer to the fact that once the void spaces were approved the buyer could be liable for increased strata fees and insurance premiums.
18. Prior to the completion of the contract of purchase and sale, ST did not provide Ms. Berge and her client with an email that ST had received on March 28, 2017 from an architect who was working with a group of eight affected owners in the strata corporation which were seeking approval for unauthorized space in their strata units. In an email to ST, the architect advised as follows:

I am sorry that I have to advise you that there are some substantive errors in your listing: ML: R2150068.

The building was developed by [a developer] who was notorious for making unpermitted changes directly after occupancy was granted, and there are several affected suites in the building, which were brought to the attention of the City a few years ago. I have been working with eight of the owners who have launched the approvals process, which has been ongoing for some time now.

The previous owner of this suite, PH5, was one of these clients until she rather suddenly sold her suite without completing the approvals process. I strongly suspect that she cut-and-run because I advised her that, in the case of her suite, her loft was extremely unlikely to ever be allowed by the City.

At best, the “loft” really an attic, might be allowed, with a fire-rated access hatch, as a storage space, but I do not feel confident of that outcome. It is more likely that the City will require that the space be entirely closed off to access. A spiral stair would never be allowed as the only access to a sleeping space.

It has definitely not been “redesigned with permits”, as you mentioned in your listing. There is a development permit, but no building permit. As I said, my client sold without completing the process and as I also said, a building permit to keep the loft is unlikely to be issued.

Please advise your client, and prospective purchasers, of the illegality of that “loft” space. The suite is in fact only a studio, and not a 1BR.

...

19. Ms. Berge says she was also unaware of the following documents that were in ST’s possession at the time:

- a) a letter from the City of Vancouver to the owners of the Strata Plan, dated February 13, 2013, which referred to the Property as follows:

9. Unit No. PH-5 – Make application for the necessary permits for the unapproved loft space... access by spiral staircase or restore this unit to comply with the approved plans as submitted under building permit no. B88762 ... within 30 days of the date of this letter.

...

Unit No. PH-5 – Loft space has been constructed without permit or approval (approximately half of the main floor square footage) accessed by an unapproved spiral staircase.

- b) a letter from the property manager to the former owner of the Property, dated February 20, 2013, which included the February 13, 2013 letter from the City to the strata council.

20. Even though Ms. Berge had not received disclosure of these items from the agent for the seller, ST, there were a number of statements in the Strata Council minutes that revealed that the issues with respect to the unauthorized space in the Property had not been resolved, including:
- a) March 8, 2016 – Strata Council indicated that it was intending to seek a legal opinion with respect to options and costs to resolve the discrepancy relating to the void space;
  - b) July 12, 2016 – Strata Council indicated that it had obtained further information from an owner and the architect pertaining to the ongoing void space issue. The information had been forwarded to the lawyers for the Strata Council to obtain a legal opinion regarding the space in individual suites and the process that will be required;
  - c) October 11, 2016 – the minutes reflected that several of the affected owners were in the process of obtaining permits to legitimize the relaxation of the floor space and to seek approval for corrective work within their suites in order to meet the building code requirements, with all permits and drawings being submitted to Council for approval before the work begins;
  - d) December 13, 2016 – the minutes reflected that the Strata Council had requested a legal opinion on how to obtain a resolution to the void space project; and
  - e) January 3, 2017 – Strata Council had met with their lawyers to discuss “the various options available to resolve the void space matter.” The minutes reflected that the meeting “raised new matters which had not previously come to light and the lawyer was asked to draft up the summary of the discussed options”.
21. Given that the buyer’s subject free offer was presented over the Easter Long Weekend, there was no opportunity for Ms. Berge to make inquiries of the City of Vancouver to confirm the legal status of the unauthorized loft space. There was also no indication in the strata minutes or any of the information provided by ST that the City would not agree to a variance or would require the buyer to close off the loft area. Ms. Berge’s understanding was that the problem with the unauthorized loft space could be remedied by replacing the spiral staircase with a staircase that was compliant with the current Building Code.
22. Ms. Berge advised the buyer on many of the potential risks that she faced in purchasing the Property, including potential exposure to special levies and increased strata fees. She did not, however, specifically alert the buyer to the risk that the City might not approve a variance for the unauthorized space and require the buyer to close off the loft space.
23. A Notice of Discipline Hearing was issued on September 13, 2019 and was served on Ms. Berge.

24. An Amended Notice of Discipline Hearing was issued on October 10, 2020 and was served on Ms. Berge.
25. Ms. Berge does not have a prior discipline history with the Council.

#### **PROPOSED FINDINGS OF MISCONDUCT**

For the sole purposes of the Proposal and based on the facts outlined herein, Ms. Berge proposes the following findings of misconduct be made by the CORC:

1. Ms. Berge committed professional misconduct within the meaning of section 35(1)(a) of the RESA in that:

in or around April 2017, while in your capacity as the buyer's agent in the purchase of a property located at XXX-XXXX West 40th Avenue, Vancouver, BC (the "Property") on a subject free basis, you did not specifically alert the buyer to the risk that the City might not approve a variance for the 224 square feet of unauthorized loft space in the Property and you did not recommend independent inquiries of the City, contrary to sections 3-3(a) (*act in best interests of clients*) and 3-4 (*act with reasonable care and skill*) of the Rules.

#### **PROPOSED ORDERS**

Based on the facts herein and the Proposed Findings of Misconduct, Ms. Berge proposes that the Notice of Discipline Hearing in this matter be resolved through the following Orders being made by the CORC, pursuant to section 43 of the RESA:

1. Ms. Berge pay a discipline penalty to the Council in the amount of \$5,000 within three (3) months from the date of this Order.
2. Ms. Berge pay enforcement expenses to Council in the amount of \$1,500 within two (2) months from the date of this Order.
3. If Ms. Berge fails to comply with any of the terms of this Order, a discipline committee may suspend or cancel Ms. Berge's licence without further notice to her.

#### **ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT**

1. Ms. Berge acknowledges and understands that the Council may refer or decline to refer the Proposal to the CORC. If the Proposal is referred to the CORC, it may be accepted or rejected by the CORC. If the Proposal is rejected by the CORC, the matter may be referred to a disciplinary hearing.
2. Ms. Berge acknowledges that she has been urged and given the opportunity to seek and obtain independent legal advice with respect to the disciplinary process, the allegations contained in the Notice of Discipline Hearing, and the execution and submission of the Proposal to the CORC; and, that she has obtained independent legal advice or has chosen not to do so, and that she is

making the Proposal with full knowledge of the contents and the consequences if the Proposal is accepted.

3. Ms. Berge acknowledges and is aware that the Council will publish the Proposal and the Consent Order or summaries thereof in its Report from Council newsletter, on the Council's website, on CanLII, a website for legal research and in such other places and by such other means as the Council in its sole discretion deems appropriate.
4. Ms. Berge acknowledges and is aware that the Superintendent of Real Estate has the right, pursuant to section 54 of the RESA, to appeal any decision of the Council, including any Consent Order made by the Council in relation to this matter.
5. Ms. Berge hereby waives her right to appeal pursuant to section 54 of the RESA.
6. If the Proposal is accepted and/or relied upon by the Council, Ms. Berge will not make any public statement(s) inconsistent with the Proposal and its contents. Nothing in this section is intended to restrict Ms. Berge from making full answer and defence to any civil or criminal proceeding(s).
7. The Proposal and its contents are made by Ms. Berge for the sole purpose of resolving the Notice of Discipline Hearing in this matter and do not constitute an admission of civil liability. Pursuant to section 41(5) of the RESA, the Proposal and its contents may not be used without the consent of Ms. Berge in any civil proceeding with respect to the matter.

"Teresa Marie Berge"

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**Teresa Marie Berge**

**Dated 13 day of November, 2020**