

**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**

**MARLENE EVA BRAUN**  
**(133873)**

**AND**

**MARLENE BRAUN PERSONAL REAL ESTATE CORPORATION**  
**(133873PC)**

**CONSENT ORDER**

RESPONDENT: Marlene Eva Braun, Representative, Norwich  
Real Estate Services Inc. dba RE/MAX Kelowna

Marlene Braun Personal Real Estate  
Corporation

DATE OF REVIEW MEETING: April 3, 2019

DATE OF CONSENT ORDER: April 3, 2019

CONSENT ORDER REVIEW COMMITTEE: E. Mignosa (Chair)  
E. Duvall  
R. Hanson  
N. Nicholson

ALSO PRESENT: E. Seeley, Executive Officer  
D. Avren, Director, Legal Services  
E. Allan, Legal Counsel for the Real Estate  
Council

**PROCEEDINGS:**

On April 3, 2019, the Consent Order Review Committee (the "Committee") resolved to accept the Consent Order Proposal (the "Proposal") submitted by Marlene Eva Braun, on her own behalf and on behalf of Marlene Braun Personal Real Estate Corporation.

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**WHEREAS** the Proposal, a copy of which is attached hereto, has been executed by Marlene Eva Braun, on her own behalf and on behalf of Marlene Braun Personal Real Estate Corporation.

**NOW THEREFORE**, the Committee having made the findings proposed in the attached Proposal, and in particular having found that Marlene Eva Braun and Marlene Braun Personal Real Estate Corporation committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*, orders that:

1. Marlene Eva Braun and Marlene Braun Personal Real Estate Corporation each be reprimanded;
2. Marlene Eva Braun and Marlene Braun Personal Real Estate Corporation be jointly and severally liable to pay a discipline penalty to the Council in the amount of \$5,000 within ninety (90) days from the date of this Order;
3. Marlene Eva Braun, at her own expense, register for and successfully complete the Real Estate Trading Services Remedial Education Course, as provided by Sauder School of Business at the University of British Columbia in the time period as directed by the Council; and
4. Marlene Eva Braun or Marlene Braun Personal Real Estate Corporation be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,500 within sixty (60) days from the date of Consent Order.

If Marlene Eva Braun or Marlene Braun Personal Real Estate Corporation fails to comply with any term of this Order, the Council may suspend or cancel their licences without further notice to them, pursuant to sections 43(3) and 43(4) of the *Real Estate Services Act*.

Dated this 3<sup>rd</sup> day of April, 2019 at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

“Elana Mignosa”

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Elana Mignosa  
Consent Order Review Committee

Attch.

## **ADDENDUM**

Please note that the Consent Order Review Committee accepted the Proposal submitted by Marlene Eva Braun, on her own behalf and on behalf of Marlene Braun Personal Real Estate Corporation, but deleted the provision for enhanced supervision as an unnecessary condition, given that Ms. Braun would be completing the Real Estate Trading Services Remedial Education Course.

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

**AND**

**IN THE MATTER OF**

**MARLENE EVA BRAUN  
133873**

**AND**

**MARLENE BRAUN PERSONAL REAL ESTATE CORPORATION  
133873 PC**

**CONSENT ORDER PROPOSAL BY MARLENE EVA BRAUN AND  
MARLENE BRAUN PERSONAL REAL ESTATE CORPORATION**

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**BACKGROUND AND FACTS**

This Consent Order Proposal (the "Proposal") is made by Marlene Eva Braun and Marlene Braun Personal Real Estate Corporation ("Braun PREC") to the Consent Order Review Committee ("CORC") of the Real Estate Council of British Columbia (the "Council") pursuant to section 41 of the *Real Estate Services Act* ("RESA").

For the purposes of the Proposal, Ms. Braun on her own behalf and on behalf of Braun PREC and the Council have agreed upon the following facts:

1. Ms. Braun (133873) has been licensed as a representative for trading services since 1998.
2. Ms. Braun became licensed as Braun PREC (133873 PC) on April 27, 2015.
3. Ms. Braun and Braun PREC were at all relevant times licensed with Norwich Real Estate Services Inc. ("Norwich").
4. In or about February 2016, Ms. Braun and GP discussed Ms. Braun/Braun PREC finding GP a condominium for purchase.
5. In or about May 2016, a condominium located at XXX-XXXX Avenue (the "Property") was listed for sale. The Property is part of Strata Corporation XXX#XXXX (the "Strata Corporation").

6. Ms. Braun owns a unit other than the Property in the Strata Corporation and was, at all material times, a member of its Strata Council (the "Strata Council").
7. On May 9, 2016, Ms. Braun contacted GP to see if he was interested in viewing the Property, as GP had previously expressed interest in the building. GP was interested and arranged to view the Property with Ms. Braun.
8. On May 11, 2016, GP and his wife DP viewed the Property with Ms. Braun. As GP and DP were interested in making an offer on the Property, Ms. Braun on behalf of Braun PREC prepared one for them later that day (the "Offer"). Pertinent details of the Offer were as follows:

Seller:	[MS and HS]
Buyer:	[GP and DP]
Price:	\$555,000
Deposit:	\$10,000 within 24 hours [of] final subject removal
Terms and Conditions:	5. HOME & PROPERTY INSPECTION...
	...
	11. Sellers agree to allow buyers access...on...Saturday June 11, 2016 and Tuesday, June 14, 2016...to perform measurements, take photos and inspect.
Subject Removal:	May 30, 2016
Completion:	July 6, 2016 (BOD pp. 19 – 25)

9. The Offer included a condition for home and property inspection ("Subject #5") and also contained a second clause providing for an inspection ("Subject #11").
10. On May 12, 2016, MS and HS accepted the Offer (the "Contract").
11. On May 29, 2016, GP and DP signed the form "Removal of 'Subject to Clause' and Appointment of Conveyancer" (the "Subject Removal Form").
12. The Subject Removal Form expressly removed Subject #5, "HOME & PROPERTY INSPECTION". It did not expressly remove Subject #11. However, the Subject Removal Form purported to remove "all conditions".
13. On June 1, 2016, MS, HS, GP and DP amended the Contract so that the deposit on the Property was due June 2, 2016 rather than within 24 hours of final subject removal.
14. On June 2, 2016, GP and DP paid the \$10,000 deposit to Norwich in Trust.
15. On June 11 and 14, 2016, as permitted by Subject #11, GP attended at the Property and on both occasions smelled an odor of sewer gas.
16. As a result of the odor, GP and DP were not prepared to proceed with the purchase. They let the deal collapse as they took the position that Subject #11 of the Contract still applied and the purchase was conditional upon inspection.

17. MS and HS disputed that the Contract was conditional and refused to permit the \$10,000 deposit in the Norwich trust account to be released to GP and DP.
18. As of July 2017, Ms. Braun had not disclosed in writing her position as a licensee to the Strata Council or disclosed her position on Strata Council to Norwich. Ms. Braun orally advised her managing broker that she was on the Strata Council prior to the transaction that is the subject of this Proposal. The President of the Strata Council states that Ms. Braun orally disclosed that she was a realtor when she was nominated to the Strata Council. On or about August 1, 2017, Ms. Braun made the required written disclosure under section 9-3 of the Rules.
19. On May 22, 2018, MS and HS commenced legal action against GP and DP for breach of the Contract. On June 12, 2018, GP and DP filed a response to civil claim asserting that the Contract was conditional upon inspection (the "Action").
20. The Council issued a Notice of Discipline Hearing on July 6, 2018 and served it on Ms. Braun on her own behalf and on behalf of Braun PREC in July 2018.
21. On October 19, 2018, the Action was settled.
22. Ms. Braun and Braun PREC have no 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. Braun and Braun PREC propose the following findings of misconduct be made by the CORC:

1. Ms. Braun and Braun PREC committed professional misconduct within the meaning of section 35(1)(a) of the RESA in that in or about January to July 2016 they
  - a. acted as the agent for GP/DP as buyer in an offer to purchase the Property while Ms. Braun owned a unit and was a member of Strata Council in the Strata Corporation, contrary to the duty to take reasonable steps to avoid a conflict of interest pursuant to section 3-3(i) of the Rules and the duty to promptly and fully disclose the conflict to the client pursuant to section 3-3(j) of the Rules;
  - b. permitted GP/DP to enter an agreement to purchase the Property which provided that an inspection of the Property by the buyer was not to occur until after the date for subject removal and failing to inform GP/DP that the agreement would not be conditional upon the inspection, contrary to the duty to act in the best interests of the client pursuant to section 3-3(1) of the Rules and to act with reasonable care and skill pursuant to section 3-4 of the Rules;
2. Ms. Braun committed professional misconduct within the meaning of section 35(1)(a) of the RESA in that in or about January to July 2016 she:

- a. acted as a member of the Strata Council when she had not made written disclosure to the Strata Corporation, contrary to section 9-3(b) of the Rules; and
- b. acted as a member of the Strata Council when she had not made the written disclosure to her managing broker, contrary to section 9-3(c) of the Rules.

### **PROPOSED ORDERS**

Based on the Facts herein and the Proposed Findings of Misconduct Ms. Braun and Braun PREC propose 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. Braun and Braun PREC be reprimanded.
2. Ms. Braun and Braun PREC be jointly and severally liable to pay a discipline penalty to the Council in the amount of \$5,000.00 within ninety (90) days of the date of this Consent Order.
3. Ms. Braun, at her own expense, register for and successfully complete the Remedial Education Course as provided by the Real Estate Division, Sauder School of Business at the University of British Columbia within the time period directed by the Council.
4. Ms. Braun's and Braun PREC's licence both include a condition requiring enhanced supervision by a managing broker for a period of not less than one year from the date of this Consent Order, as more particularly described in Schedule 1 to this Order.
5. Ms. Braun and Braun PREC be jointly and severally liable to pay enforcement expenses in the amount of \$1500.00 within sixty (60) days from the date of this Consent Order.
6. If Ms. Braun and Braun PREC fail to comply with any of the terms of this Order, a Discipline Committee may suspend or cancel their licences without further notice to them.

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

1. Ms. Braun and Braun PREC acknowledge and understand 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. Braun and Braun PREC have been advised of and understand their right to obtain independent legal advice regarding the disciplinary process, including with respect to the execution and submission of the Proposal.
3. Ms. Braun and Braun PREC acknowledge and are 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. Braun and Braun PREC acknowledge and are 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. Braun and Braun PREC hereby waive their right to appeal pursuant to section 54 of the RESA.
6. The Proposal and its contents are made by Ms. Braun and Braun PREC 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. Braun and Braun PREC in any civil proceeding with respect to the matter.

**“Marlene Eva Braun”**

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**Marlene Braun on her own behalf and on behalf  
of Braun PREC**

**Dated 14<sup>th</sup> day of February, 2019**



## **SCHEDULE "A"**

- 1) Ms. Braun and Braun PREC's licence will be restricted to Norwich or another brokerage acceptable to Council (the "Brokerage"), for a period of not less than one year from the date of the issuance of a Consent Order.
- 2) Ms. Braun and Braun PREC will be subject to enhanced supervision by their managing broker, as set out in these conditions, for a period of not less than one year from the date of the issuance of a Consent Order. (the "Enhanced Supervision Period").
- 3) Ms. Braun and Braun PREC must remain under the direct supervision of Peter Kirk, the managing broker of the Brokerage, or a successor managing broker acceptable to the Council (the "Managing Broker"), during the Enhanced Supervision Period.
- 4) Ms. Braun and Braun PREC must keep the Managing Broker informed on a timely basis of the real estate services that they are providing and other activities they are engaging in and must consult with the Managing Broker in advance of taking any action regarding any questions or concerns they may have regarding compliance with the RESA, the Regulations, the Bylaws, the Rules and all other applicable legislation and the Brokerage's policies and procedures.
- 5) Ms. Braun and Braun PREC must report all their transactions to the Brokerage promptly, and ensure that no such transactions are conducted outside the Brokerage.
- 6) Ms. Braun and Braun PREC must ensure that all documents relevant to each transaction are provided to the Brokerage and contained in the deal file, including the contract of purchase and sale, all offers received for the listing, assignment agreements, addendums, trade records sheets, disclosure statements, releases and other pertinent information.
- 7) The Managing Broker must provide a final report to the Council confirming:
  - a. that Ms. Braun and Braun PREC's real estate services have been conducted under their direct supervision;
  - b. that Ms. Braun and Braun PREC's activities have been carried out competently and in compliance with the RESA, the Regulations, the Bylaws, the Rules and all other applicable legislation, and in accordance with Brokerage's policies and procedures;
  - c. that they have reviewed all documents signed by Ms. Braun's clients and that all documents relevant to the transaction have been provided to the client and are contained in the trade records file; and
  - d. the number of real estate transactions that Ms. Braun has conducted and details regarding the client(s), the agency offered; and any customer relationships.
- 8) The Report will be reviewed by the Chair of the Council, who will determine if the requirement for enhanced supervision for the period set by Council has been met, and if not, will so advise the Managing Broker and Ms. Braun and Ms. Braun may elect to:

- a. continue with enhanced supervision until the Chair of the Council is satisfied by further evidence that the required period and purpose of enhanced supervision has been met; or
  - b. have her licence suspended until a further order is made by the Council under section 43(4) or (5) of the RESA.
- 9) The Managing Broker must immediately report to the Council anything of an adverse nature with respect to Ms. Braun's real estate services, including failure on her part to observe the requirements of the RESA, the Regulations, the Bylaws, the Rules and all other applicable legislation, complaints received by the Brokerage, the nature of the complaint and the parties, and how it was resolved.
- 10) The Managing Broker must ensure that Ms. Braun and her unlicensed or licensed assistants, if any, receive adequate, appropriate and ongoing training with respect to their obligations under the RESA, Regulations, Bylaws, and Rules, and in accordance with the Brokerage's policies and procedures.
- 11) The Managing Broker must be provided with a copy of these conditions and, prior to the commencement of the Enhanced Supervision Period, must confirm in writing to the Council that they have read these conditions, are aware of their duties under these conditions, and agree to accept those duties. Any acceptable successor managing broker will also be provided with a copy of these conditions and must provide the same confirmation within 14 days of assuming the Managing Broker's duties.
- 12) If for any reason the Managing Broker is unable to perform any of the duties imposed herein, they must immediately advise Council of this inability.
- 13) If the Managing Broker is unable or unwilling to perform any of these duties and/or fails to meet their obligations under these conditions, Ms. Braun's licence is suspended and will remain suspended until all conditions herein are met or a further order is made by Council under section 43(4) or (5) of the RESA. Any suspension of Ms. Braun's licence under this paragraph does not limit the Council's ability to take further disciplinary action for breach of the conditions or of the RESA, the Regulations, the Bylaws, the Rules and all other applicable legislation.

## ADDENDUM

In the Proposal signed by Ms. Braun, paragraph 1 under “Proposed Findings of Misconduct” reads:

1. Ms. Braun and Braun PREC committed professional misconduct within the meaning of section 35(1)(a) of the RESA in that in or about January to July 2016 they

...

- b. permitted GP/DP to enter an agreement to purchase the Property which provided that an inspection of the Property by the buyer was not to occur until after the date for subject removal and failing to inform GP/DP that the agreement would not be conditional upon the inspection, contrary to the duty to act in the best interests of the client pursuant to section 3-3(1) of the Rules and to act with reasonable care and skill pursuant to section 3-4 of the Rules;...

Paragraph 1 under “Proposed Findings of Misconduct” read:

1. Ms. Braun and Braun PREC committed professional misconduct within the meaning of section 35(1)(a) of the RESA in that in or about January to July 2016 they

...

- b. permitted GP/DP to enter an agreement to purchase the Property which provided that an inspection of the Property by the buyer was not to occur until after the date for subject removal and failing to inform GP/DP that the agreement would not be conditional upon the inspection, contrary to the duty to act in the best interests of the client pursuant to section 3-3(a) of the Rules and to act with reasonable care and skill pursuant to section 3-4 of the Rules;...