

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
SURINDERPAL SINGH TOOR
(098791)

CONSENT ORDER

RESPONDENT: Surinderpal Singh Toor, Representative,
Homelife Glenayre Realty Company Ltd.

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
A. Bjornson, 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 Surinderpal Singh Toor.

WHEREAS the Proposal, a copy of which is attached hereto, has been executed by Surinderpal Singh Toor.

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

1. Surinderpal Singh Toor pay a discipline penalty to the Council in the amount of \$3,500 within ninety (90) days from the date of this Order;

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2. Surinderpal Singh Toor, at his 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
 3. Surinderpal Singh Toor pay enforcement expenses to the Council in the amount of \$1,500 within sixty (60) days from the date of this Order.

If Surinderpal Singh Toor fails to comply with any term of this Order, the Council may suspend or cancel his licence without further notice to him, pursuant to sections 43(3) and 43(4) of the *Real Estate Services Act*.

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

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

“Elana Mignosa”

Elana Mignosa

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

**SURINDERPAL SINGH TOOR
(098791)**

CONSENT ORDER PROPOSAL BY SURINDERPAL SINGH TOOR

BACKGROUND AND FACTS

This Consent Order Proposal (the “Proposal”) is made by Mr. Toor 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, Mr. Toor and the Council have agreed upon the following facts:

1. Mr. Toor (098791) has been licensed as a representative since 1992.
2. Mr. Toor was at all relevant times licensed as a representative with Homelife Glenayre Realty Company Ltd.
3. On April 17, 2015, Mr. Toor listed a residential property located in Abbotsford (the “Property”) for sale.
4. The Property is owner-built. At the time of listing, the BC Housing website indicated that the Property had not met the conditions for sale and therefore was not permitted to be offered for sale.
5. The owner builder, or any subsequent owner, of an owner-built home must provide an Owner Builder Disclosure Notice (“OBDN”) to any potential buyers within the first 10 years after initial occupancy, as required by the *Homeowner Protection Act* (“HPA”).

The OBDN must be provided prior to entering into a contract of purchase and sale. It informs the buyer:

- that the home was built under an “Owner Builder Authorization” issued by the Homeowner Protection Office,
- when the 10-year period started, and
- whether there is a voluntary policy of home warranty insurance in place.

6. If the home is not covered by a policy of home warranty insurance, statutory protection is available to a potential buyer, pursuant to section 23 of the HPA.
7. Prior to listing, Mr. Toor did not take adequate steps to determine whether the Property could be listed for sale. At the time, no OBDN had been issued for the Property. Mr. Toor had received documentation from the seller indicating that the Property was registered with the HPO and had an occupancy permit, but did not verify the status of the Property on the BC Housing website.
8. Mr. Toor failed to comply with his brokerage policies requiring that licensees take steps to ensure a seller complied with HPA requirements.
9. On or around July 30, 2015, Mr. Toor prepared an offer, as limited dual agent, with a completion date of August 28, 2015.
10. The contract of purchase and sale did not include a term indicating that the OBDN had been provided to the buyer. In fact, the seller did not obtain or provide to the buyer an OBDN prior to entering into the contract.
11. On August 28, 2015 the sale completed.
12. The OBDN was not issued or provided to the buyer until on or around September 10, 2015.
13. Mr. Toor did not advise the buyer or seller to seek independent legal advice with respect to the HPA requirements.
14. Mr. Toor did not advise the buyer or seller about the potential for a conflict of interest arising from the circumstances.
15. A Notice of Discipline Hearing was issued on February 26, 2019 and served on Mr. Toor.

PROPOSED FINDINGS OF MISCONDUCT

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

1. While representing the seller, Mr. Toor failed to:
 - (a) ensure that the seller had complied with the provisions of the *Homeowner Protection Act* ("HPA") and met the conditions for selling the Property, prior to listing the Property;
 - (b) make sufficient or any enquiries of the seller or with the BC Housing-New Homes Registry (the "Registry") to confirm the accuracy of the documents he had received from the seller, which purported to indicate that the Property had been properly registered with the Registry, and that the seller had obtained an occupancy permit;
 - (c) comply with your brokerage's policy on HPA requirements, and/or to follow the direction of his managing broker to ensure that the seller complied with those requirements prior to listing a property for sale;

- (d) ensure that prior to an offer being made for the Property, the seller had, as required under section 21(2) of the HPA , provided the buyer with a BC Housing Owner Builder Disclosure Notice that stated whether the Property was built under an Owner Builder Authorization and whether the Property was covered by a policy of home warranty insurance (“Disclosure Notice”); and
- (e) ensure that the seller provided the Disclosure Notice in the time period required under the HPA,

all contrary to section 3-4 [act with reasonable care and skill] of the Rules; and
- (f) advise the seller to seek independent professional advice with respect to his obligations under the HPA and the conditions that must be met, contrary to section 3-3(d) of the Rules.

2. While representing the buyer, Mr. Toor failed to:

- (a) take sufficient or any steps to ascertain whether the seller had complied with the provisions of the HPA;
- (b) ensure that the buyer received a copy of the Disclosure Notice, as required by section 21(2) of the HPA, prior to the buyer making an offer on the Property;
- (c) include a term in the contract of purchase and sale that indicated that the Disclosure Notice had been provided to the buyer;
- (d) ensure that the buyer received the Disclosure Notice in the time period required by the HPA,

all contrary to sections 3-3(h) [use reasonable efforts to discover relevant facts], and 3-4 [act with reasonable care and skill] of the Rules; and
- (e) advise the buyer to seek independent professional advice with respect to his purchase of an owner-built home, and the seller’s requirements and the conditions that must be met under the HPA, contrary to section 3-3(d) of the Rules.

3. While representing the buyer and the seller Mr. Toor:

- (a) failed to advise either about the potential for a conflict of interest;
- (b) failed to take reasonable steps to avoid a conflict of interest; and
- (c) acted in a conflict of interest when he engaged in the conduct set out above in 1. and 2.,

contrary to sections 3-3(i)and (j) of the Rules.

PROPOSED ORDERS

Based on the facts herein and the Proposed Findings of Misconduct, Mr. Toor 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. Mr. Toor pay a discipline penalty to the Council in the amount of \$3,500 within ninety (90) days of the date of this Order.
2. Mr. Toor, at his own expense, register for and successfully complete the Real Estate Trading Services 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.
3. Mr. Toor pay enforcement expenses to Council in the amount of \$1,500 within sixty (60) days from the date of this Consent Order.
4. If Mr. Toor fails to comply with any of the terms of this Order, a Discipline Committee may suspend or cancel Mr. Toor's licence without further notice to him.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

1. Mr. Toor 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. Mr. Toor acknowledges that he 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 he has obtained independent legal advice or has chosen not to do so, and that he is making the Proposal with full knowledge of the contents and the consequences if the Proposal is accepted.
3. Mr. Toor 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. Mr. Toor 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. Mr. Toor hereby waives his right to appeal pursuant to section 54 of the RESA.
6. The Proposal and its contents are made by Mr. Toor 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 Mr. Toor in any civil proceeding with respect to the matter.

“Surinderpal Singh Toor”

SURINDERPAL SINGH TOOR

Dated 6th day of March, 2019