

**THE REAL ESTATE COUNCIL OF BRITISH COLUMBIA**  
**IN THE MATTER OF THE *REAL ESTATE SERVICES ACT***  
**S.B.C. 2004, c. 42 as amended**

**AND**

**IN THE MATTER OF**

**ANDREW CHARLES MCLANE**  
**(139600)**

**AND**

**ANDREW MCLANE PERSONAL REAL ESTATE CORPORATION**  
**(139600PC)**

**CONSENT ORDER**

RESPONDENT: Andrew Charles McLane, representative,  
460 Realty Inc.

Andrew McLane Personal Real Estate  
Corporation

DATE OF REVIEW MEETING: November 30, 2018

DATE OF CONSENT ORDER: November 30, 2018

CONSENT ORDER REVIEW COMMITTEE: L. Hrycan  
E. Mignosa  
R. Wong

**PROCEEDINGS:**

On October 24, 2018, a Consent Order Proposal (“COP”) submitted by Andrew Charles McLane, on his own behalf and on behalf of Andrew McLane Personal Real Estate Corporation, was considered by a Consent Order Review Committee (the “Committee”) but not accepted. On November 5, 2018, a revised COP acceptable to the Committee was submitted by Andrew Charles McLane, on his own behalf and on behalf of Andrew McLane Personal Real Estate Corporation.

**WHEREAS** the COP, a copy of which is attached hereto, has been executed by Andrew Charles McLane, on his own behalf and on behalf of Andrew McLane Personal Real Estate Corporation.

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

1. Andrew Charles McLane and Andrew McLane Personal Real Estate Corporation have their licences suspended for seven (7) days;
2. Andrew Charles McLane and Andrew McLane Personal Real Estate Corporation be prohibited from acting as an unlicensed assistant during their licence suspension period;
3. Andrew Charles McLane and Andrew McLane 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;
4. Andrew Charles McLane, 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
5. Andrew Charles McLane and Andrew McLane Personal Real Estate Corporation be jointly and severally liable to pay enforcement expenses to the Council in the amount \$1,500 within sixty (60) days from the date of this Order.

If Andrew Charles McLane and/or Andrew McLane 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 30th day of November, 2018, at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE



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Len Hrycan  
Consent Order Review Committee

Attch.

**IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*  
S.B.C. 2004, c. 42 as amended**

**AND**

**IN THE MATTER OF**

**ANDREW CHARLES McLANE  
139600**

**AND**

**ANDREW McLANE PERSONAL REAL ESTATE CORPORATION  
139600PC**

**CONSENT ORDER PROPOSAL BY ANDREW McLANE and ANDREW McLANE PERSONAL REAL  
ESTATE CORPORATION**

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**BACKGROUND AND FACTS**

This Consent Order Proposal (the "Proposal") is made by Andrew Charles McLane ("Mr. McLane") and Andrew McLane Personal Real Estate Corporation 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 Service Act* ("RESA").

For the purposes of the Proposal, Mr. McLane, on his own behalf and on behalf of Andrew McLane Personal Real Estate Corporation, and the Council have agreed upon the following facts:

1. Mr. McLane (139600) has been licensed as a representative since 2004.
2. Andrew McLane Personal Real Estate Corporation has been licensed since 2009.
3. Mr. McLane was at all relevant times licensed as a representative with 460 Realty Inc.
4. This matter arises from Mr. McLane's conduct with respect to:
  - a. failure to display the office address of his brokerage on his real estate marketing materials in 2016; and

- b. false and/or misleading advertising respecting his listing of a property in 2016.

#### **Brokerage office address**

5. At all material times, the business address for 460 Realty Inc. was 1551 Estevan Road, Nanaimo, B.C.
6. In or about 2016, Mr. McLane produced and distributed real estate marketing materials in respect of his real estate services. These marketing materials included sales brochures.
7. Mr. McLane's sales brochures displayed the name of his brokerage as "460 Realty" and the address as "584 Beach Road Qualicum Beach, BC".
8. The address of 584 Beach Road was at all material times Mr. McLane's home address, not the address of the brokerage. The address of the brokerage was not displayed on the sales brochures.
9. Mr. McLane says that he displayed his home address rather than the brokerage address because he worked from home and not from the brokerage office.
10. On January 30, 2017, 460 Realty opened a new branch office in Parksville, B.C.
11. Effective February 10, 2017, Mr. McLane became licensed as a representative with the Parksville branch office of 460 Realty. He subsequently amended his marketing materials to display the address of the Parksville branch address of the brokerage.

#### **False/misleading advertising**

12. Pursuant to a Multiple Listing contract between the sellers and 460 Realty Inc. dated April 18, 2016, Mr. McLane was the listing agent of a property located at XXX Crescent Road West, Qualicum Beach, B.C. (the "Property"). The listing price of the Property was \$9XX,XXX.
13. The Property is a two and a half storey, single-family detached home that was originally built in 1993. In or around 2010, the sellers embarked on a substantial renovation of the property, which was completed in 2013.
14. In conjunction with his listing of the Property, Mr. McLane completed a Residential Data Input Form, which stated:
  - a. the Property was built in 2013;
  - b. the Property had a security system;
  - c. the Property had a sprinkler system; and

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- d. the Property was fully fenced.
15. With respect to the issue of age of the property, the Residential Data Input Form for the MLS had two sections:
    - a. section 101 "AGE" with the choice of checking one of two boxes: "unknown" or "renovated";
    - b. section 103 "YEAR BUILT" with an empty box requiring the year to be filled in.
  16. The form contemplates filling in either section 101 or section 103, but in the case at hand, Mr. McLane checked "renovated" in section 101 and he filled in "year built" as "2013".
  17. Mr. McLane prepared a feature sheet for the listing of the Property which stated:
    - a. the Property was built in 2013;
    - b. the Property had a security system;
    - c. the Property had a sprinkler system; and
    - d. the Property was fully fenced.
  18. Mr. McLane and the sellers canceled the original multiple listing contract dated April 18, 2016, and entered into a new Multiple Listing contract dated June 17, 2016, with a new listing price for the Property of \$9XX,XXX.
  19. The listing price of the Property was reduced once again on July 24, 2016 to \$8XX,XXX.
  20. On August 6, 2016, the complainants along with their agent, VN, attended at the Property for a viewing. Mr. McLane was not present.
  21. The complainants had viewed a number of properties prior to attending at the Property and were interested in the Property based on the information they gleaned from the listing information.
  22. A number of listed features of the Property were appealing to the complainants. For example, the complainants were avid gardeners, and therefore a sprinkler system was of prime importance to them. In addition, they had two large dogs and therefore wanted a house with a fully-fenced yard.
  23. Upon their viewing of the Property, the complainants learned that the Property was not fully fenced, and in fact only had partial fencing along one side of the perimeter of the Property.
  24. In addition, they did were not able to locate a security system in the house.

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25. Following the viewing, VN telephoned Mr. McLane and asked him about the existence of a security system at the Property. Mr. McLane admitted there was no security system at the Property and that he had made a mistake on the listing information.
  
  26. There was no discussion regarding the sprinkler system, though the complainants did notice a few sprinkler heads when they visited the Property.
  
  27. The complainants had no questions about the age of the house, as the sellers had renovated it in the style of a newer house.
  
  28. On August 7, 2017, the complainants submitted an offer to purchase the Property, which offer was accepted by the sellers on August 9, 2016 (the "Contract").
  
  29. The terms of the Contract included:
    - a. purchase price of \$8XX,XXX;
    - b. deposit of \$2X,XXX to be paid within 72 hours of acceptance;
    - c. subject removal date of August 19, 2016, with subjects for the benefit of the buyer as follows:
      - i. financing;
      - ii. inspection;
      - iii. insurance;
      - iv. buyer obtaining survey certificate and work permits from seller; and
      - v. buyer attending at the City of Qualicum and being satisfied with all aspects of property including building envelope, restrictions, permits, dimensions and encroachments;
    - d. completion date of September 29, 2016; and
    - e. possession date of September 30, 2016;
  
  30. A property disclosure statement dated June 17, 2016 was expressly incorporated into the Contract, as was a title search dated April 18, 2016.

31. On or about August 10, 2016, pursuant to the terms of the Contract, Mr. McLane provided various permits and related documents to VN, who forwarded these documents to the complainants (the "Permit Documents").
32. The Permit Documents included, among other things, a building permit issued by the Town of Qualicum Beach on April 28, 2010 respecting the "addition/Reno" of the Property.
33. Through the Permit Documents, as well as through communication with their agent VN, the complainants were made aware that the Property was not in fact built in 2013, but was renovated on an existing foundation.
34. On August 15, 2016, the complainants' inspection of the Property was conducted by a home inspection company.
35. On August 16, 2016, VN emailed Mr. McLane with several questions concerning aspects of the Property that the inspection did not address.
36. One of the items not addressed in the inspection was the sprinkler system, with respect to which VN asked Mr. McLane: "is the irrigation system working and the location of the control pad?" to which Mr. McLane replied: "the irrigation system was not working so they took the panel off and never put it back on. Easy fix!"
37. The inspection report prepared for the complainants confirmed the age of the home on the Property as follows: "3 years most some areas are 1993, mostly foundation."
38. The complainants removed the subjects on August 19, 2016.
39. On September 29, 2016, the transaction completed, and on September 30, 2016, the complainants took possession.
40. Upon taking possession, the complainants learned that not only was the sprinkler system "not working", but it was missing several significant components such as the water connection to the house, the controller, the panel, and various valves.
41. The complainants were subsequently advised by an irrigation contractor that the system consisted of only parts of an original installation over 20 years old, and that installing a new system would be more efficient and economical than attempting to make the existing system functional.
42. Since taking possession, the complainants have experienced numerous issues with the Property and have learned that the renovations done by the sellers were different than and more extensive than indicated by the Permit Documents.
43. The Council received a complaint from the complainants on February 20, 2017.
44. Mr. McLane has advised the Council that:

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- a. he believed, at the time of listing, the Property had a security system, and only learned it did not on August 6, 2016, the date of the complainants' first viewing;
  - b. he believed, at the time of listing, the Property was fenced on three sides of its perimeter;
  - c. he believed, at the time of listing, the Property had a sprinkler system, and did not learn it was not functioning until after the complainant's inspection on August 15, 2016; and
  - d. he knew, at the time of listing, the Property was not built in 2013 but was in fact renovated substantially by the sellers and completed in 2013.
45. A Notice of Discipline Hearing was issued on June 25, 2018 and served on Mr. McLane on his own behalf and on behalf of Andrew McLane Personal Real Estate Corporation.
  46. Mr. McLane has no prior discipline with the Council.

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

For the sole purposes of the Proposal and based on the Facts outlined herein, Mr. McLane and Andrew McLane Personal Real Estate Corporation propose the following findings of misconduct be made by the CORC:

Mr. McLane and Andrew McLane Personal Real Estate Corporation committed professional misconduct within the meaning of section 35(1)(a) of the RESA. In particular:

1. they published real estate advertising in the form of sales brochures listing Mr. McLane's home address instead of their brokerage office address, contrary to section 4-6(4) of the Rules;
2. in acting as the seller's agent for property located at XXX Crescent Road West, Qualicum Beach, B.C. they represented in listing materials that the property had the following features when they knew or ought to have known that information was incorrect:
  - a. a security system;
  - b. a sprinkler system ;
  - c. fully fenced; and
  - d. built in 2013.

contrary to sections 3-4 and 4-7 of the Rules.

#### **PROPOSED ORDERS**



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Based on the Facts herein and the Proposed Findings of Misconduct Mr. McLane and Andrew McLane Personal Real Estate Corporation 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. Andrew Charles McLane's and Andrew McLane Personal Real Estate Corporation's licences be suspended for seven (7) days;
2. Andrew Charles McLane and Andrew McLane Personal Real Estate Corporation be prohibited from acting as an unlicensed assistant during their licence suspension period;
3. Andrew Charles McLane and Andrew McLane Personal Real Estate Corporation be jointly and severally liable to pay a discipline penalty to the Council in the amount of \$5,000.00 within ninety (90) days from the date of this Order;
4. Andrew Charles McLane, 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
5. Andrew Charles McLane and Andrew McLane Personal Real Estate Corporation be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,500.00 within sixty (60) days from the date of this Order.
6. If Mr. McLane or Andrew McLane Personal Real Estate Corporation fails to comply with any of the terms of this Order, a Discipline Committee may suspend or cancel Mr. McLane's and Andrew McLane Personal Real Estate Corporation's licences without further notice to them.

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

1. Mr. McLane and Andrew McLane Personal Real Estate Corporation 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. Mr. McLane and Andrew McLane Personal Real Estate Corporation 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. Mr. McLane and Andrew McLane Personal Real Estate Corporation 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

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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. McLane and Andrew McLane Personal Real Estate Corporation 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. Mr. McLane and Andrew McLane Personal Real Estate Corporation hereby waive their right to appeal pursuant to section 54 of the RESA.
6. The Proposal and its contents are made by Mr. McLane and Andrew McLane Personal Real Estate Corporation 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. McLane and Andrew McLane Personal real Estate Corporation in any civil proceeding with respect to the matter.

***“Andrew Charles McLane”***

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**Andrew Charles McLane on his own behalf and on behalf of Andrew McLane Personal Real Estate Corporation**

**Dated 5<sup>th</sup> day of November, 2018**