

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

**DAVID ROBERT HUTCHINSON
(138204)**

AND

**DAVID HUTCHINSON PERSONAL REAL ESTATE CORPORATION
(138204PC)**

CONSENT ORDER

RESPONDENT: David Robert Hutchinson,
Representative, West Coast Realty Ltd.
dba Sutton Group - West Coast Realty,
Broadway.

David Hutchinson Personal Real Estate
Corporation.

DATE OF REVIEW MEETING: September 13, 2017

DATE OF CONSENT ORDER: September 13, 2017

CONSENT ORDER REVIEW COMMITTEE: R. Holmes, Q.C., Chair
M. Wong
S. Sidhu

ALSO PRESENT: E. Seeley, Executive Officer
G. Thiele, Director, Legal Services
David McKnight, Legal Counsel for the
Real Estate Council

PROCEEDINGS:

On September 13, 2017, the Consent Order Review Committee ("Committee") resolved to accept the Consent Order Proposal ("COP") submitted by David Robert Hutchinson, on his own behalf and on behalf of David Hutchinson Personal Real Estate Corporation.

WHEREAS the COP, a copy of which is attached hereto, has been executed by the Council and by David Robert Hutchinson, on his own behalf and on behalf of David Hutchinson Personal Real Estate Corporation.

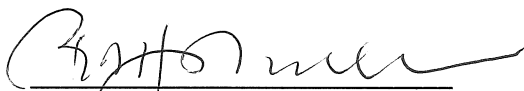
NOW THEREFORE, the Committee having made the findings proposed in the attached COP, and in particular having found that David Robert Hutchinson and David Hutchinson Personal Real Estate Corporation committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*,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

1. David Robert Hutchinson and David Hutchinson Personal Real Estate Corporation each be reprimanded;
2. David Robert Hutchinson and David Hutchinson Personal Real Estate Corporation be jointly and severally liable to pay a discipline penalty to the Council in the amount of \$3,000.00 within ninety (90) days of the date of this Order;
3. David Robert Hutchinson, 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
4. David Robert Hutchinson and David Hutchinson Personal Real Estate Corporation be jointly and severally liable to pay enforcement expenses of this Consent Order to the Council in the amount \$1,500.00 within sixty (60) days from the date of this Order.

If David Robert Hutchinson or David Hutchinson 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 13 day of September, 2017, at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE



R. Holmes, Q.C., Chair
Consent Order Review Committee

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**IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*
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IN THE MATTER OF

DAVID ROBERT HUTCHINSON (138204)

AND

DAVID HUTCHINSON PERSONAL REAL ESTATE CORPORATION (138204PC)

**CONSENT ORDER PROPOSAL BY DAVID ROBERT HUTCHINSON AND DAVID HUTCHINSON PERSONAL
REAL ESTATE CORPORATION**

BACKGROUND AND FACTS

This Consent Order Proposal (the "Proposal") is made by David Robert Hutchinson ("Mr. Hutchinson") and David Hutchinson 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. Hutchinson, David Hutchinson Personal Real Estate Corporation and the Council have agreed upon the following facts:

1. Mr. Hutchinson (138204) has been licensed as a real estate trading and rental representative since 2003.
2. Mr. Hutchinson became licensed as David Hutchinson Personal Real Estate Corporation (138204PC) on February 24, 2017.
3. Mr. Hutchinson was at all relevant times licensed as a real estate trading and rental representative with West Coast Realty Ltd. ("West Coast").
4. At all material times, Mr. Hutchinson was acting as the agent of W.A., the potential purchaser of a property located at #XXXX - XXXX Alberni Street, Vancouver, B.C. (the "Property").
5. On May 25, 2015, W.A. agreed to a Contract of Purchase and Sale (the "Contract") to purchase the Property from the seller. Details of the Contract were as follows:

Purchase Price: \$403,500

Completion Date: September 1, 2015

Subjects included: Financing, entering into a suitable tenancy agreement with the management company, reviewing and approving strata documents, and a title search (to be removed by June 1, 2015).

In addition, the Contract provided that a deposit of \$20,000 was to be paid within 24 hours of subject removal.

6. On June 1, 2015, all subjects were removed and a \$15,000 deposit was provided by the buyer W.A. who then went out of town. As a result, an amendment to the deposit terms was adjusted on an addendum to the Contract (the "Addendum") to \$15,000 instead of \$20,000 but included a term that "the buyer agrees to increase the deposit by \$5,000.00 when she arrives back into Canada after July 2, 2015." The seller and buyer both agreed to the Addendum.
7. On July 4, 2015, an email was forwarded by Mr. Hutchison to the seller's representative with an attached picture of a \$5,000 cheque (the "Cheque") which had been received by Mr. Hutchinson from the buyer W.A. The email only contained the picture of the Cheque with no comment from Mr. Hutchison.
8. On July 4, 2015, the seller's representative requested that Mr. Hutchinson ensure that the cheque was certified by Monday, July 6, 2015.
9. Despite never physically receiving W.A.'s cheque for \$5,000, Mr. Hutchinson did not advise the seller or the seller's representative that neither he nor West Coast ever had physical possession of the Cheque.
10. On September 2, 2015, the purchaser W.A. failed to complete the transaction.
11. The forfeiture of W.A.'s deposit subsequently became the subject of legal proceedings.
12. A Notice of Disciplinary Hearing was issued on July 6, 2017 and served on Mr. Hutchinson.
13. Mr. Hutchison and David Hutchinson Personal Real Estate Corporation have no previous discipline history with Council

PROPOSED FINDINGS OF MISCONDUCT

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

Mr. Hutchinson and David Hutchinson Personal Real Estate Corporation committed professional misconduct within the meaning of section 35(1)(a) of the RESA in that:

- i. contrary to section 3-4 of the Rules, he failed to apply reasonable care and skill when he forwarded a picture of the Cheque to the seller's agent but did not indicate the Cheque was not physically in his possession.

PROPOSED ORDERS

Based on the Facts herein and the Proposed Findings of Misconduct, Mr. Hutchinson and David Hutchinson Personal Real Estate Corporation 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. Hutchinson and David Hutchinson Personal Real Estate Corporation each be reprimanded.
2. Mr. Hutchinson and David Hutchinson Personal Real Estate Corporation be jointly and severally liable to pay a discipline penalty to the Council in the amount of \$3,000.00 within ninety (90) days of the date of this Order.
3. Mr. Hutchinson, 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.
4. Mr. Hutchinson and David Hutchinson Personal Real Estate Corporation be jointly and severally liable to pay enforcement expenses in the amount of \$1,500 within sixty (60) days from the date of this Consent Order.
5. If Mr. Hutchinson and David Hutchinson Personal Real Estate Corporation 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. Mr. Hutchinson and David Hutchinson Personal Real Estate Corporation 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. Hutchinson and David Hutchinson Personal Real Estate Corporation acknowledges that they 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 they have obtained independent legal advice or has chosen not to do so, and that they are making the Proposal with full knowledge of the contents and the consequences if the Proposal is accepted.

3. Mr. Hutchinson and David Hutchinson Personal Real Estate Corporation acknowledges 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. Mr. Hutchinson and David Hutchinson Personal Real Estate Corporation acknowledges 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. Hutchinson and David Hutchinson 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. Hutchinson and David Hutchinson 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. Hutchinson and David Hutchinson Personal Real Estate Corporation in any civil proceeding with respect to the matter.



**DAVID ROBERT HUTCHINSON ON HIS OWN
BEHALF AND ON BEHALF OF DAVID
HUTCHINSON PERSONAL REAL ESTATE
CORPORATION**

Dated 14 day of September, 2017

Signature of Mr. Hutchinson witnessed on the above date by

Harumi Nakamura
Witness Name (Please Print)

Harumi
Witness Signature