

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

AND

**IN THE MATTER OF
STEPHEN PATRICK BURKE
065630**

CONSENT ORDER

RESPONDENT: Stephen Patrick Burke, Representative,
West Coast Realty Ltd. dba Sutton
Group-West Coast Realty

DATE OF REVIEW MEETING: June 28, 2017

DATE OF CONSENT ORDER: July 10, 2017

CONSENT ORDER REVIEW COMMITTEE: R. Holmes, Q.C., Chair
C. Geurts
L. Hrycan
K. Khoo
S. Sidhu
T. Styffe

ALSO PRESENT: E. Seeley, Acting Executive Officer
G. Thiele, Director, Legal Services
Patrick Gilligan - Hackett, Legal Counsel
for the Real Estate Council

PROCEEDINGS:

On June 28, 2017, an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver ("ASF") submitted by Stephen Patrick Burke was considered by the Consent Order Review Committee (the "Committee") but not accepted. On July 5, 2017, a revised ASF acceptable to the Committee was submitted by Stephen Patrick Burke.

WHEREAS the ASF, a copy of which is attached hereto, has been executed on behalf of the Council and by Stephen Patrick Burke.

NOW THEREFORE, the Committee having made the findings proposed in the attached ASF, and in particular having found that Stephen Patrick Burke committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* (RESA), orders that:

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1. Stephen Patrick Burke be reprimanded;
 2. shall pay a discipline penalty to the Council in the amount of \$1,000.00 within ninety (90) days of the date of this Order;
 3. Stephen Patrick Burke, 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. Stephen Patrick Burke 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 Stephen Patrick Burke 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 *Real Estate Services Act*.

Dated this 10th day of July, 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

Attch.

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

AND

**IN THE MATTER OF
STEPHEN PATRICK BURKE
(065630)**

**AGREED STATEMENT OF FACTS
PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER**

The following agreement has been reached between Stephen Patrick Burke ("Mr. Burke") and the Real Estate Council of British Columbia ("Council").

- A. Mr. Burke hereby consents to an Order to be made pursuant to section 43 of the *Real Estate Services Act* ("RESA") that:
- a. He be reprimanded;
 - b. He pay a discipline penalty to the Council in the amount of \$1,000.00 within ninety (90) days of the date of this Order;
 - c. He successfully complete the 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;
 - d. He pay enforcement expenses pursuant to section 44 of the Act in the amount of \$1,500.00 within sixty (60) days from the date of the Consent Order; and
 - e. If he fails to comply with any of the terms of the Order as set out above, a Discipline Committee may suspend or cancel his licence without further notice to him pursuant to section 43(3) and 43(4) of the RESA.
- B. As a basis for this Order, the Council and Mr. Burke acknowledge and agree that the facts set forth herein are correct:
1. Mr. Burke was at all relevant times licensed as a Representative with Sutton Group – West Coast Realty.
 2. Mr. Burke's licensing history is as follows:

2002/08/01 – present	Representative, Trading, Rental West Coast Realty
1999/11/26 – 2002/08/01	Representative, Trading, Rental Broadview Realty
1995/06/26 – 1999/11/26	Representative, Trading Rental Crest Realty Westside

1992/07/23 – 1995/06/26	Representative, Trading, Rental 424721 B.C. Limited
1992/03/10 – 1992/07/23	Representative, Trading, Rental Contact Realty Ltd. (Van)
1991/12/31 – 1992/03/10	Representative, Trading, Rental Contact Realty Ltd.
1990/05/15 – 1991/12/31	Representative, Trading, Rental Nechako Real Estate Ltd
1987/03/03 – 1990/05/15	Representative, Trading, Rental Hemisphere Realty Ltd.

3. During the period from March through May, 2016 Mr. Burke was acting as the seller's ("Seller") representative in connection with the sale of a condominium ("Property") located at [REDACTED] Harwood Street, Vancouver, British Columbia.
4. On March 11, 2016 [REDACTED] ("Buyer") attended an open house at the Property. At this time, the Buyer approached Mr. Burke and told him he wished to write an offer on the Property and that he wanted Mr. Burke to represent him. Mr. Burke declined to represent him as a designated agent in a client relationship but agreed to do so in a customer relationship. The Buyer signed a Working with a Realtor® form acknowledging the customer relationship.
5. The Buyer asked Mr. Burke to draw up a Contract of Purchase and Sale ("Contract") for the Property. The relevant details of the Contract were as follows:

Price:	\$485,000
Deposit:	\$25,000 within 24 hours of acceptance
Completion:	May 30, 2016
Possession:	May 31, 2016
6. The Seller had an agency relationship with Mr. Burke.
7. On page 3 of the Contract, the following statement appears and was initialed by the Buyer: "The Buyer acknowledges that Stephen Burke represent (sic) the Seller solely and is not providing an agency relationship to the Buyer".
8. On April 7, 2016 Mr. Burke wrote to the Buyer by email to ask if he would advance the completion date under the Contract to "the end of April instead of May". The Buyer responded by email on the same date stating: "We'll close before 28th April". The Buyer added that there was no need to change the Contract and stated "[t]his will be a voluntary mutual decision on the buyer and seller".
9. On April 8, 2016 Mr. Burke drew up an Addendum to the Contract ("Addendum") to reflect the requested change. The Addendum provided for the following dates: to April 29, 2016 from May 30, 2016 for completion and to April 30, 2016 from May 31, 2016 for possession and adjustments. Mr. Burke sent a copy of the Addendum to the Buyer asking him to sign it. Mr. Burke told the Buyer he would then have the Seller sign the Addendum.

10. On April 8, 2016 the Buyer signed and returned a copy of the Addendum to Mr. Burke and covered the Addendum he had signed with the following statement:

“Please find the addendum attached with a rain check that we are going ahead with change of date based on the commitment letter from TD.... If this funding commitment is good everything will be good.”

11. On April 8, 2016 Mr. Burke replied to the Buyer as follows:

“If you sign this date change you are committed to performing on the contract. So you either know you can get financing or you don’t. I cannot recommend that you sign this date change. I will hold on to this and NOT send it to the Seller until I am clear on your situation.”

12. After this exchange and probably on April 8, 2016 Mr. Burke provided the Addendum signed by the Buyer to the Seller for her signature. At the time he did so, Mr. Burke was not “clear on the [Buyer’s] situation”. Mr. Burke did not, therefore, satisfy his commitment to the Buyer not to send the Addendum to the Seller until he was clear on the Buyer’s situation.

13. In his response to the Council dated June 24, 2016 Mr. Burke says:

“At 11:05 [on April 8, 2016] Mr. [REDACTED] forwarded an e-mail to me with the Subject:“(sic) Commitment Signed [REDACTED]”. ... I met with Mr. and Mrs. [REDACTED] on Saturday. I had received the e-mail from the notary sent to me by Mr. [REDACTED], and I thought it best to speak to Mr. [REDACTED] directly when I showed the apartment to him and his daughter. This is where Mr. [REDACTED] and I have different recollections of our conversation. Based on our conversation on April 9 and the “Commitment Signed’ (sic) document Mr. [REDACTED] had sent, I had the seller sign the date change Mr. [REDACTED] had signed and sent to me previously.

14. During the period leading up to and including April 20, 2016 the Buyer sought to assign his interest in the Contract on two occasions. On both occasions, the Buyer asked Mr. Burke to prepare documents to give effect to the proposed assignment. Mr. Burke refused to do so. On April 20, 2016 Mr. Burke advised the Buyer to contact a lawyer to draw up the proposed assignment. Mr. Burke was concerned about the Buyer’s purpose in seeking to assign his interest in the Contract as the purpose appeared to relate to the Buyer’s financing.
15. On April 20, 2016 Mr. Burke sent an email to the Buyer in which he told the Buyer the Seller had rented an apartment and paid a damage deposit based on the Buyer’s agreement to change the completion, possession, and adjustments dates first set out in the Contract. Mr. Burke said the Seller would agree to change these dates back to the end of May provided the Buyer agreed to pay the Seller the sum of \$2,400.00 in “damages” for her payments on account of a damage deposit and rent for May, 2016.
16. On April 20, 2016 the Buyer stated in his reply to Mr. Burke:

“Please treat the addendum of date change which you sent me today ad (sic) null and void. I did not give you any permission and confirmation to use it, after you promised to hold on to it till I confirm back. Refer to your email sent to me dated April 8, 2016.”

17. The Buyer added:

“You can still get this closing done on April 29, 2016 if you send me the addendum signed by the seller that she has no objection if I assign this contract to my parents.”

18. On April 21, 2016 Mr. Burke wrote to his managing broker to advise him about his concerns in connection with both two requests by the Buyer to assign the Contract and the Addendum signed by the Buyer.

19. As a result of the above events, the dates for completion, possession, and adjustments under the Contract reverted the dates in late May that had first appeared in the Contract at which time the transaction completed and title was registered in the names of the Buyer’s parents.

20. Mr. Burke acknowledges that having agreed to hold the Addendum signed by the Buyer on a condition, he took inadequate steps to ensure the condition had been satisfied before he provided the Addendum signed by the Buyer to the Seller.

21. On April 30, 2016 Mr. Burke issued a personal cheque to the Seller for \$1600 to reimburse her for the rent she had to pay in May, 2016 on the apartment she had rented in anticipation of an April 28 completion date.

22. Mr. Burke has been licensed for approximately 30 years and has not previously been the subject of a disciplinary penalty.

C. Proposed Acceptance of Findings and Waiver

1. Based on the Agreement Statement of Facts herein, and without making any admission of liability, Mr. Burke is prepared to accept the following finding if made against him by the Council’s Consent Order Review Committee:

(a) Mr. Burke committed professional misconduct within the meaning of section 35(1)(a) of the RESA by contravening section 3-4 of the Council Rules in that he:

- i. failed to act with reasonable care and skill while providing real estate services to [REDACTED], a buyer with whom he was in a customer relationship, in connection with his purchase of a condominium located at [REDACTED] Harwood Street, Vancouver, BC from [REDACTED], a seller with whom he was in a client relationship, by providing the buyer’s signed addendum amending the completion, possession, and adjustments dates of the contract of purchase and sale for the property to the seller for

her signature when he had agreed with the buyer to hold the addendum on a conditional basis and he did not know when he provided the addendum to the seller whether the condition had been satisfied.

2. Mr. Burke acknowledges that he has been advised that he has the right to seek independent legal advice before signing this Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver.
3. Mr. Burke acknowledges and is aware that the Council will publish the Consent Order and penalty herein in its Report from Council newsletter, on the Council's website, and on CanLII, a website for legal research.
4. Mr. Burke 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 this Agreed Statement of Facts, Proposed Acceptance of Findings, and Waiver and Consent Order.
5. The Agreed Statement of Facts and Proposed Acceptance of Findings contained herein are made for the sole purpose of resolving a complaint being considered by the Council and for that purpose only. Such agreed statement of facts and proposed acceptance of findings cannot be used in any other proceeding of any kind.


Patrick Gilligan-Hackett, Legal Counsel

As to Part B only (Agreed Statement of Facts)

Dated 5 day of July, 2017


Stephen Patrick Burke

As to Parts A, B, C (proposed penalty, Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver)

Dated 5 day of July, 2017