

File # 15-368

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

IN THE MATTER OF
DAWN ELIZABETH LAYDEN
(111195)

CONSENT ORDER

RESPONDENT:	Dawn Elizabeth Layden, Representative, 100 Mile Realty Ltd. dba Royal LePage 100 Mile Realty
DATE OF REVIEW MEETING:	August 31, 2016
DATE OF CONSENT ORDER:	September 9, 2016
CONSENT ORDER REVIEW COMMITTEE:	D. Fimrite M. Leslie S. Lynch, Chair T. O'Grady
ALSO PRESENT:	R.O. Fawcett, Executive Officer G. Thiele, Director, Legal Services E. Jeon, Legal Counsel for the Real Estate Council
PROCEEDINGS:	

On August 31, 2016 the Consent Order Review Committee (the "Committee") resolved to accept the Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver ("ASF") submitted by Dawn Elizabeth Layden.

WHEREAS the ASF, a copy of which is attached hereto, has been executed by Dawn Elizabeth Layden and on behalf of the Council;

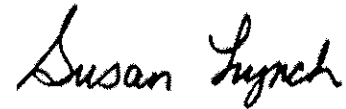
NOW THEREFORE, the Committee having made the findings proposed in the attached ASF, and in particular having found that Dawn Elizabeth Layden committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*, orders that:

1. Dawn Elizabeth Layden's licence be suspended for fourteen (14) days;
2. Dawn Elizabeth Layden 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 in the time period as directed by the Council;
3. Dawn Elizabeth Layden pay enforcement expenses of this Consent Order to the Council in the amount of \$1,500.00 within sixty (60) days from the date of this Order.

If Dawn Elizabeth Layden 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 9th day of September, 2016 at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE



S. Lynch, Chair
Consent Order Review Committee

Attch.

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

IN THE MATTER OF

DAWN ELIZABETH LAYDEN
(111195)

AGREED STATEMENT OF FACTS,
PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

The following agreement has been reached between Dawn Elizabeth Layden ("Ms. Layden") and the Real Estate Council of British Columbia (the "Council").

- A. Ms. Layden hereby consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* that she be suspended for fourteen (14) days, and that she, at her 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 as directed by the Council. Ms. Layden further agrees to pay enforcement expenses of this Consent Order to the Council in the amount of \$1,500.00 within sixty (60) days from the date of the Order herein.
- B. Ms. Layden further consents to an Order that if she fails to comply with any of the terms of the Order set out above, a Discipline Hearing Committee may suspend or cancel her licence without further notice to her pursuant to section 43(3) and 43(4) of the *Real Estate Services Act*.
- C. As a basis for this Order, Ms. Layden acknowledges and agrees that the facts set forth herein are correct:
1. Ms. Layden was at all relevant times licensed as a representative with 100 Mile Realty Ltd. dba Royal LePage 100 Mile Realty ("RLP 100 Mile").
 2. Ms. Layden's licensing history is as follows:

<u>Start Date</u>	<u>End Date</u>	<u>Brokerage</u>	<u>License Level</u>	<u>License Category</u>
2015/03/17	Present	Royal LePage 100 Mile Realty	Representative	Trading
2013/07/18	2015/03/17	RE/MAX Country Lakes Realty	Representative	Trading
1998/09/04	2013/07/17	**Unlicensed**		

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

1997/10/17	1998/09/03	RE/MAX Golden Country Real Estate Services (Cltn)	Representative	Trading, Rental
1996/08/30	1997/10/17	RE/MAX Golden Country Real Estate Services	Representative	Trading, Rental
1994/01/13	1996/08/29	Coldwell Banker Cariboo Real Estate	Representative	Trading, Rental

4. This matter concerns Ms. Layden's conduct while acting as a limited dual agent in the sale of a property located in Clinton, B.C. (the "Property") by B.J. (the "Seller") to D.H. and M.M. (together, the "Buyers").
5. On or about September 2, 2015, the Seller and the Buyers entered into a Contract of Purchase and Sale with respect to the Property (the "Contract") for the price of \$86,000. On or about September 12, 2015, all subjects were removed and the agreed upon deposit was provided. The transaction completed on or about September 24, 2015.
6. The Contract included an Addendum that provided, among other things, that:
 - a) the Buyers had "read and approved the Title Search which is incorporated into and forms a part of this contract as page 9 of 9 pages"; and that
 - b) the Buyers' offer was subject to the Buyers' conveyancer "doing a search on the Non Financial Charge on the Title which reads "UNDERSURFACE TSN 5XXXXW Interalia 1XXXXE FORFEITED TO CROWN 06.11.1950" and the Purchasers being satisfied with the results of the search on or before September 14, 2015".
7. Ms. Layden did not obtain a Title Search through her brokerage as Ms. Layden believed she did her due diligence by inserting the subject regarding the conveyancer's title search and believed the conveyancer would conduct a title search with respect to all charges, liens, and interests as opposed to limiting the title search to the single covenant referenced in the subject. Ms. Layden believed that all conveyancers automatically conducted complete title searches for their client and that the conveyancer would inform the Buyers of anything "alarming" with respect to the title.
8. Instead, Ms. Layden received an incomplete document with respect to a title search from the Seller in that she only received page 1 of 2 of the title search. Ms. Layden assumed the title search she received was complete. Ms. Layden attached this incomplete document to the Contract as page 9 of 9.
9. The unattached second page of the title search contained seven charges, liens, and interests that limited the Buyers' ability to build on the land.
10. Ms. Layden was aware that the Buyers intended to build on the Property. According to the Buyers, had they been aware of the seven charges, liens, and

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

interests outlined on the omitted second page of the title search, they would not have approved the Title Search and completed the transaction.

11. Ms. Layden has no prior discipline history with the Council.

C. Proposed Acceptance of Findings and Waiver

1. Based on the Agreed Statement of Facts as outlined herein, and without making any admissions of liability, Dawn Elizabeth Layden is prepared to accept the following findings if made against her by the Council's Consent Order Review Committee:
 - (a) Dawn Elizabeth Layden committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* while acting as a limited dual agent in the purchase and sale of the Property in that:
 - i. contrary to section 3-4 of the Council Rules, she failed to act with reasonable care and skill when she failed to obtain a title search for the Property through her brokerage, and instead attached to the Contract of Purchase and Sale for review and approval by the Buyers a title search obtained from the Seller which was:
 - incomplete, in that it omitted seven charges, liens, and interests limiting the Buyers' ability to build on the Property; and
 - not current, in that it was dated April 27, 2015, and the Contract of Purchase and Sale was entered into by the parties on September 3, 2015; and
 - ii. contrary to section 3-3(h) of the Council Rules, she failed to use reasonable steps to discover relevant facts respecting the Property prior to the Buyers' purchase of the Property; in particular, that the title to the Property was encumbered by seven charges, liens, and interests limiting the Buyers' ability to build on the Property.
2. Ms. Layden hereby waives her right to appeal pursuant to section 54 of the *Real Estate Services Act*.
3. Ms. Layden acknowledges that she has a right to seek independent legal advice before signing this Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver.
4. Ms. Layden 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.
5. Ms. Layden acknowledges and is aware that the Superintendent of Real Estate has the right, pursuant to section 54 of the *Real Estate Services Act*, to appeal any

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

decision of the Council, including this Agreed Statement of Facts, Proposed Acceptance of Findings, and Waiver and Consent Order.

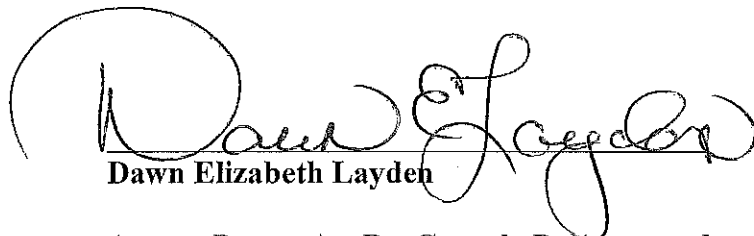
6. The Agreed Statement of Facts and Proposed Acceptance of Findings contained herein are made for the sole purpose of resolving a complaint being considered by the Council and for that purpose only. Such agreed statement of facts and proposed acceptance of findings cannot be used in any civil proceedings.



**Esther Jeon, Legal Counsel
Real Estate Council of British Columbia**

**As to Part C only (Agreed Statement
of Facts)**

Dated 12 day of August, 2016



Dawn Elizabeth Layden

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

Dated 4 day of August, 2016