

IN THE MATTER OF THE *REAL ESTATE SERVICES ACT***S.B.C. 2004, c. 42****AND****IN THE MATTER OF****DEREK DOUGLAS GILLETTE****AND****DEREK GILLETTE PERSONAL REAL ESTATE CORPORATION****CONSENT ORDER****RESPONDENTS:**Derek Douglas Gillette,
Representative, Bowen Realty
Woodgrove Ltd. dba RE/MAX of
NanaimoDerek Gillette Personal Real Estate
Corporation, Bowen Realty
Woodgrove Ltd. dba RE/MAX of
Nanaimo**DATE OF REVIEW MEETING:**

December 7, 2015

DATE OF CONSENT ORDER:

December 15, 2015

CONSENT ORDER REVIEW COMMITTEE:M. Leslie
C. Lindberg, Chair
C. Squires**ALSO PRESENT:**R.O. Fawcett, Executive Officer
G. Thiele, Director, Legal Services
D. Berger, Legal Counsel for the Real
Estate Council**PROCEEDINGS:**

On December 7, 2015 the Consent Order Review Committee (the "Committee") resolved to accept the Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver ("ASF") submitted by Derek Douglas Gillette and Derek Gillette Personal Real Estate Corporation.

WHEREAS the ASF, a copy of which is attached hereto, has been executed by Derek Douglas Gillette, Derek Gillette Personal Real Estate Corporation and on behalf of the Council;

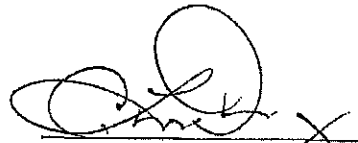
NOW THEREFORE, the Committee having made the findings proposed in the attached ASF, and in particular having found that Derek Douglas Gillette and Derek Gillette Personal Real Estate Corporation committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*,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

1. Derek Douglas Gillette and Derek Gillette Personal Real Estate Corporation each be reprimanded;
2. Derek Douglas Gillette and Derek Gillette Personal Real Estate Corporation be jointly and severally liable to pay a discipline penalty to the Council in the amount of \$2,500.00 within ninety (90) days of the date of this Order;
3. Derek Douglas Gillette, at his own expense, register for and successfully complete the Real Estate Trading Services Remedial Education Course; and
4. Derek Douglas Gillette and Derek Gillette 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 Derek Douglas Gillette and Derek Gillette Personal Real Estate Corporation fail 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 15th day of December, 2015 at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE



C. Lindberg, 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

**DEREK DOUGLAS GILLETTE
(095263)**

AND

**DEREK GILLETTE PERSONAL REAL ESTATE CORPORATION
(095263PC)**

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

The following agreement has been reached between Derek Douglas Gillette ("Mr. Gillette"), Derek Gillette Personal Real Estate Corporation and the Real Estate Council of British Columbia (the "Council").

- A. Mr. Gillette and Derek Gillette Personal Real Estate Corporation hereby consent to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* that they be reprimanded and that they be jointly and severally liable to pay a discipline penalty to the Council in the amount of \$2,500.00 within ninety (90) days of the date of the Order herein. Further, they agree to be jointly and severally liable 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. Mr. Gillette consents to an Order that he, 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 as directed by the Council.
- C. Further, Mr. Gillette and Derek Gillette Personal Real Estate Corporation consent to an Order that if they fail to comply with any of the terms of the Order set out above, a Discipline Hearing Committee may suspend or cancel their licences without further notice to them pursuant to section 43(3) and 43(4) of the *Real Estate Services Act*.
- D. As a basis for this Order, Mr. Gillette and Derek Gillette Personal Real Estate Corporation acknowledge and agree that the facts set forth herein are correct:

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

1. Mr. Gillette was at all relevant times licensed as a representative with Bowen Realty Woodgrove Ltd. dba RE/MAX of Nanaimo.
2. Mr. Gillette's licensing history is as follows:

<u>Start Date</u>	<u>End Date</u>	<u>Licensing History</u>	<u>Licence Level</u>	<u>Licence Category</u>
1992/12/16	Present	Bowen Realty Woodgrove Ltd. dba RE/MAX of Nanaimo (X014782)	Representative	Trading, Rental
1991/09/10	1992/12/16	Coast Realty Group Ltd. (X013492)	Representative	Trading, Rental

Derek Gillette Personal Real Estate Corporation

<u>Start Date</u>	<u>End Date</u>	<u>Licensing History</u>	<u>Licence Level</u>	<u>Licence Category</u>
2009/02/12	Present	Derek Gillette Personal Real Estate Corporation (095263PC)	Personal Real Estate Corporation	Trading, Rental

File 13-300

3. Mr. Gillette became licenced as Derek Gillette Personal Real Estate Corporation on February 12, 2009.
4. Mr. Gillette is the president and director of Urban Trending Inc. and had a website www.urbantrending.com which advertised on the internet under "Urban Trending" and "Urban Partners".
5. In April 2014, under the heading "consulting", advertising on the internet stated "Urban Partners works collaboratively with Urban Trending to provide a comprehensive range of real estate services."
6. It also stated "Urban Partners can help you take the next step from the planning phase to the construction phase by providing highly specialized real estate and construction consulting services including asset management, land use planning...".

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7. Under the heading "sales" it stated "With over 20 years' experience and the highest real estate sales awards in Canada, our sales team knows the impact and importance of a properly executed sales strategy."
8. Under the heading "Who We Are" it stated "We are a group of real estate focused professionals specialized in target marketing for residential developments."
9. There was no indication in the advertisement whether real estate licensees or a licensed real estate brokerage was involved.
10. When this was brought to the attention of Mr. Gillette by the Council, the advertising was amended and under the heading "consulting", it stated "Urban Partners works collaboratively with Urban Trending to provide a comprehensive range of real estate services using licensed realtors."
11. At the bottom of the column it stated "Using our licensed consultants."
12. A further amendment to the advertising indicated that "Urban Trending is not a licensed brokerage".
13. Mr. Gillette contended that Urban Trending is not providing real estate services but rather marketing services only, which includes social media marketing, demographic analysis, website design, and other media related services.
14. Mr. Gillette stated that all sales are done by a licensed realtor and their related brokerage. He contended that Urban Trending does real estate marketing and branding only.
15. The Council has informed Mr. Gillette through his legal counsel that in the advertisements he has offered to provide real estate services outside of his brokerage which comes within the definition of "providing" in section 1 of the *Real Estate Services Act* which is defined as "in relation to real estate services, and includes offering to provide such services".
16. Mr. Gillette's managing broker has confirmed with the Council that in early 2013, Mr. Gillette asked him if income from his company Urban Trending could be processed through their brokerage, Bowen Realty Woodgrove Ltd. dba Re/Max of Nanaimo. The managing broker advised Mr. Gillette at that time that the income was not related to real estate services and could not be processed through the brokerage. The managing broker told Mr. Gillette that he could not associate the brokerage name with anything that was not real estate services related and for which a licence would not be required. He told Mr. Gillette as Urban Trending was apparently not connected with real estate sales activity, the brokerage name would not appear on any advertising or promotional material for that entity.
17. Mr. Gillette now understands that while designing a marketing plan may be an activity that does not require licensing, executing that plan in real estate advertising by offering

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

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to provide real estate services is a licensed activity and cannot be done outside of his brokerage through an unlicensed entity.

18. Mr. Gillette states that he is going to have to meet with his managing broker to decide how to separate the advertising of the non-real estate services part of his marketing plan through Urban Trending and Urban Partners, and any real estate services advertising which must identify the name of his brokerage and his name as the licensee advertising in the advertisement of real estate services.

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1. Mr. Gillette became licensed as Derek Gillette Personal Real Estate Corporation on February 12, 2009 and was so licensed at all relevant times.
2. On or about Friday, July 19, 2013, ██████████ called Mr. Gillette's office to inquire about having Mr. Gillette list Mr. ██████████ and his wife's property. Mr. ██████████ explained that the property was then listed with another brokerage.
3. Mr. Gillette explained that he could not list the property while it was listed by another brokerage. Mr. ██████████ explained that the listing agreement would be cancelled. Mr. Gillette suggested he meet with Mr. and Mrs. ██████████ on Monday. Mr. ██████████ was insistent that Mr. Gillette meet them on the weekend, as the property was then in a clean and tidy condition and he wanted the property listed and marketed right away. Mr. ██████████ was concerned that because of his kids, the property would not stay clean and tidy for long. He wanted photos taken while the home was in a presentable condition. Mr. Gillette acquiesced to Mr. ██████████ request and agreed to meet Mr. and Mrs. ██████████ on Sunday, July 21, 2013. Mr. Gillette explained that marketing the property could not occur until the listing agreement with the other brokerage was cancelled.
4. On Sunday, July 21, 2013, Mr. Gillette met with the ██████████ at his office. The listing agreement with the other brokerage had not yet been cancelled. Mr. Gillette discussed making arrangements for a photographer to attend at the property. He explained again that he could not list the property so long as it was listed with another brokerage. Because the other listing agreement had not been cancelled, Mr. Gillette was unable to include in the contract the dates for the commencement and expiry of the listing. Mr. Gillette wanted to ensure the names of the sellers on the listing contract matched the names of the owners as registered with the land title office. As it was a Sunday, he could not confirm that information. As such, he left the names of the sellers blank with the intention to fill them in later. The ██████████ were aware that the contract did not include a commencement date, an expiry date or their names. They knew, and agreed, that that information would be completed after the listing agreement with the other brokerage had been cancelled. The ██████████ signed the contract.

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5. At 9:32 am on Monday, July 22, 2013, Mrs. [REDACTED] emailed Mr. Gillette confirming cancellation of the listing agreement with the other brokerage and inquiring as to when on the following day the photographer would attend at the property.
6. At 2:05 pm on July 22, 2013, Mr. Gillette's assistant emailed the [REDACTED] thanking them for listing the property with Mr. Gillette.
7. On July 22 or 23, 2013, Mr. Gillette obtained a title search of the property and filled in the missing information (commencement and expiry dates, and names of sellers) on the listing agreement.
8. On July 23, 2013, Mrs. [REDACTED] informed Mr. Gillette that a prospective buyer who had previously viewed the property may be interested in making an offer. She allowed Mr. Gillette's photographer to continue taking photographs of the property. Later that evening, the [REDACTED] requested Mr. Gillette stop any work in relation to the listing of the property because they had their own buyer.
9. At 9:28 am on July 24, 2013, Mr. Gillette's assistant emailed the [REDACTED] providing a copy of the listing agreement that included the information completed by Mr. Gillette.
10. Mr. Gillette did not have the [REDACTED] initial the additions to the listing agreement as it had quickly become a moot point. He and the [REDACTED] immediately began discussions about an alternate fee arrangement to assist the [REDACTED] in the sale of the property to the buyer.
11. At 12:28 pm on July 24, 2013, Mr. [REDACTED] wrote an email to Mr. Gillette inquiring about coming to an agreement concerning Mr. Gillette's remuneration for the listing and sale of the property. The email included:

"the purpose of going through the paper work and signing the undated documents was to allow us to be expedited once we cancelled our existing listing contract with the other agent."
12. Later that day, the [REDACTED] and Mr. Gillette agreed that Mr. Gillette would be paid \$5,000 for the sale of the property and the [REDACTED] would employ Mr. Gillette as their agent for the upcoming purchase of a property.
13. On August 3, 2013, the [REDACTED] informed Mr. Gillette that they had entered into an agreement to purchase a property. They did not employ Mr. Gillette as their agent for that purchase.
14. On August 19, 2013, Mr. [REDACTED] emailed Mr. Gillette and informed him that the [REDACTED] would not agree to pay Mr. Gillette anything in connection with the purchase of a home.

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15. Mr. Gillette then requested that the sellers either honour their agreement and pay a purchasing commission, or pay him his full commission in the amount of \$17,440.00 for the sale of their property as per the original listing agreement.
16. Mr. Gillette has not taken any steps to collect the full commission on the sale of the property or collect a purchaser's commission on the [REDACTED] purchase of a property.
17. The following day, August 20, 2013, the [REDACTED] filed a complaint against Mr. Gillette to the Vancouver Island Real Estate Board alleging that Mr. Gillette was "attempting to collect a commission on our property sale that he did not list."
18. In their complaint, the [REDACTED]:
 - (a) incorrectly state that "at no time did we confirm for [Mr. Gillette] the cancellation of the pre-existing agreement", which in fact was written in an email by the [REDACTED];
 - (b) state they requested "that we mutually agree to terminate our agreement"; and
 - (c) incorrectly state that their agreement to pay Mr. Gillette was done under duress (it was, in fact, their idea to pay Mr. Gillette \$5,000 to conclude the sale, as set out in an email from the [REDACTED] to Mr. Gillette).
19. On March 24, 2014 the Vancouver Island Real Estate Board forwarded the complaint to the Real Estate Council.
20. Mr. Gillette states that he now realizes that he should not have permitted the sellers to sign the listing agreement until it was complete.
21. Mr. Gillette has no disciplinary record with the Council.

B. Proposed Acceptance of Findings and Waiver

1. Based on the Agreed Statement of Facts as outlined herein, and without making any admissions of liability, Derek Douglas Gillette, and Derek Gillette Personal Real Estate Corporation are prepared to accept the following findings if made against them by the Council's Consent Order Review Committee:
 - (a) Derek Douglas Gillette and Derek Gillette Personal Real Estate Corporation committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* [contravention of Act, Regulation or Council Rules] in that they:

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- (i) contravened section 7(3)(a) of the *Real Estate Services Act* by apparently offering to provide real estate services in real estate advertising under the

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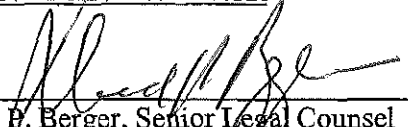
name "Urban Trending" and "Urban Partners" which was other than on behalf of the brokerage in relation to which they were licensed, when in fact such services were provided through his brokerage;

- (ii) contravened section 4-6(2) and (3) of the Council Rules by publishing real estate advertising that did not contain his licensee name and the name of his brokerage.

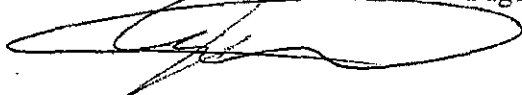
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- (iii) contravened section 3-4 of the Council Rules in that he had the sellers sign an incomplete listing agreement as they wanted to get their property on the market as soon as they were no longer obligated with respect to a previous listing agreement and he assumed that the sellers would ratify the information he later filled in to complete the listing agreement but the sellers tried to cancel the said agreement;
2. Mr. Gillette and Derek Gillette Personal Real Estate Corporation hereby waive their right to appeal pursuant to section 54 of the *Real Estate Services Act*.
 3. Mr. Gillette and Derek Gillette Personal Real Estate Corporation acknowledge that they have a right to seek independent legal advice before signing this Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver.
 4. Mr. Gillette and Derek Gillette Personal Real Estate Corporation acknowledge and are 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. Mr. Gillette and Derek Gillette Personal Real Estate Corporation acknowledge and are aware that the Superintendent of Real Estate has the right, pursuant to section 54 of the *Real Estate Services Act*, to appeal any 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 other proceeding of any kind.
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AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER



David P. Berger, Senior Legal Counsel
Real Estate Council of British Columbia



Derek Douglas Gillette on his behalf and
on behalf of Derek Gillette Personal Real
Estate Corporation

As to Part D only (Agreed Statement of Facts)

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

Dated 29th day of October, 2015

Dated 28 day of October, 2015