

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

**IN THE MATTER OF
HOMELIFE GLENAYRE REALTY CHILLIWACK LTD.**

AND

ALLAN CHARLES BROWNE

CONSENT ORDER

RESPONDENTS:	Allan Charles Browne, Managing Broker, Homelife Glenayre Realty Chilliwack Ltd. Homelife Glenayre Realty Chilliwack Ltd., Brokerage
DATE OF REVIEW MEETING:	August 28, 2014
DATE OF CONSENT ORDER:	October 6, 2014
CONSENT ORDER REVIEW COMMITTEE:	R. Archibald S. Ghose A. Ghouri M. Leslie S. McGougan, Chair
ALSO PRESENT:	R.O. Fawcett, Executive Officer G. Thiele, Director, Legal Services D. Berger, Legal Counsel for the Real Estate Council

PROCEEDINGS:

On August 28, 2014 the Consent Order Review Committee (the "Committee") resolved to accept the Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver ("ASF") submitted by Homelife Glenayre Realty Chilliwack Ltd. and Allan Charles Browne.

WHEREAS the ASF, a copy of which is attached hereto, has been executed by Homelife Glenayre Realty Chilliwack Ltd., Allan Charles Browne 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 Homelife Glenayre Realty Chilliwack Ltd. and Allan Charles Browne committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*, orders that:

1. Homelife Glenayre Realty Chilliwack Ltd. and Allan Charles Browne each be reprimanded;
2. Allan Charles Browne, at his own expense, register for and successfully complete the Broker's 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. Homelife Glenayre Realty Chilliwack Ltd. and Allan Charles Browne be jointly and severally liable to pay a discipline penalty to the Council in the amount of \$1,000.00 within ninety (90) days of the date of this Order; and
4. Homelife Glenayre Realty Chilliwack Ltd. and Allan Charles Browne be jointly and severally liable to pay enforcement expenses of this Consent Order to the Council in the amount \$1,250.00 within sixty (60) days from the date of this Order.

If Homelife Glenayre Realty Chilliwack Ltd. and/or Allan Charles Browne 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 6th day of October, 2014 at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

"S. McGougan"
S. McGougan, Chair
Consent Order Review Committee

Attch.

File #11-500

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

IN THE MATTER OF

**HOMELIFE GLENAYRE REALTY CHILLIWACK LTD.
(X026818)**

AND

**ALLAN CHARLES BROWNE
(015819)**

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

The following agreement has been reached between Homelife Glenayre Realty Chilliwack Ltd. ("Homelife") Allan Charles Browne ("Mr. Browne") and the Real Estate Council of British Columbia (the "Council").

- A. Homelife consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* that it be reprimanded.
- B. Mr. Browne hereby consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* that he be reprimanded and that he, at his own expense, register for and successfully complete the Broker's 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. Homelife and Mr. Browne consent to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* that they be jointly and severally liable to pay a disciplinary penalty to the Council in the amount of \$1,000.00 within ninety (90) days of the date of the Order herein.
- D. Homelife and Mr. Browne further consent to an Order that they be jointly and severally liable to pay enforcement expenses of this Consent Order to the Council in the amount of \$1,250.00 within sixty (60) days from the date of the Order herein. Homelife and Mr. Browne further 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*.

E. As a basis for this Order, Homelife and Mr. Browne acknowledge and agree that the facts set forth herein are correct:

1. Homelife was at all relevant times licensed as a brokerage for trading, rental and strata management and has been licensed for strata management since January 1, 2006 and for trading and rental since February 16, 1999.
2. Mr. Browne was at all relevant times licensed as a managing broker with Homelife.
3. Mr. Browne'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>
01/01/2006	Present	Homelife Glenayre Realty Chilliwack Ltd. (X026818)	Managing Broker	Trading, Rental, Strata
16/02/1999	01/01/2006	Homelife Glenayre Realty Chilliwack Ltd. (X026818)	Managing Broker	Trading, Rental
16/06/1992	15/02/1999	Homelife Glenayre Realty Company Ltd. (Chwk) (X022545)	Managing Broker	Trading, Rental
05/01/1990	16/06/1992	Homelife Glenayre Realty Company Ltd. (X013044)	Associate Broker	Trading, Rental
30/06/1987	05/01/1990	Homelife Glenayre Realty Company Ltd. (X013044)	Representative	Trading, Rental
30/06/1985	29/06/1987	*** Unlicensed ***		
19/03/1984	29/06/1985	Homelife Glenayre Realty Company Ltd. (X013044)	Representative	Trading, Rental
19/10/1983	19/03/1984	Cade Holdings Ltd. & John Corrie Holdings	Representative	Trading, Rental

Ltd. dba Glenayre
Realty Company
(X001289)

06/10/1983 18/10/1983 *** Unlicensed ***

30/06/1981 05/10/1983 Block Bros. Realty Ltd. Representative Trading, Rental
(Abba)(Old) (X000325)

08/06/1979 11/02/1980 Fraser City Realty Ltd. Representative Trading, Rental

Secondary Licence

21/05/2010 To Present Homelife Glenayre Managing Trading,
Realty Chilliwack Ltd. Broker Rental, Strata
(ChwkKWil)

4. On July 3, 2012 the Council received a complaint from the strata council of a strata corporation of a strata building against a strata manager who was licensed with Homelife at the material time in question.
5. A written services agreement was entered into between the strata corporation and Homelife on April 1, 2010. It provided strata management services to the strata corporation until December 31, 2012.
6. Between April 1, 2010 and October 22, 2012 the brokerage failed to disclose to the strata corporation in its written services agreement the amount of the fees it charged to owners where a reminder letter was required to be sent for nonpayment of strata fees and also an NSF charge to the owners where a strata fee cheque was returned by the financial institution as NSF. However there was a clause in the written services agreement which stated as follows:

“nonpayment of strata fees – to take legal action at the expense of the Strata Corporation for and in the name of the strata corporation, to effect the collection of unpaid monthly strata fees, special levies, user fees, contributions to the contingency reserve fund and any other monies due to the Strata Corporation and to sign, file and deliver certificates of liens, receipts, certificates, or acknowledgements, all at the direction of the strata council.

7. When the Council contacted Mr. Browne on or about October 22, 2012 with respect to the actual amount of these charges as referred to in paragraph 8 above, he admitted that the amounts were not previously disclosed, however he would update the schedule to the written services agreement as to the amounts for these charges.
8. Mr. Browne states that he permitted the brokerage to enter into an arrangement with an after hour emergency service provider to provide emergency services directly to the strata corporation without first obtaining the direction of the strata manager or the brokerage.
9. Mr. Browne states that the emergency service provider was to act as a first responder whose job it was to attend the emergency and contain it. They were to take no further action until the strata manager and the insurance adjuster were informed and took the appropriate next steps.
10. Mr. Browne states that he now realizes that the brokerage cannot source out emergency services directly to a provider for which a licence is required as the provider is giving advice as to the expenditure of strata corporation funds and that this should be done through the direction of the strata manager of the brokerage at first instance rather than directly with the owner. Mr. Browne realizes that he cannot delegate this authority to spend strata corporation money to an emergency services provider.

Discipline History

11. Pursuant to a hearing decision dated September 8, 1997 Mr. Browne, as nominee for the brokerage, was negligent within the meaning of section 9.12 of Regulation 75/61 under the former *Real Estate Act* in that he:
 - (a) failed to ensure that the agent kept proper and up to date books, records and accounts;
 - (b) failed to ensure that the trust funds were sufficient to meet trust liabilities for the property management trust accounts;
 - (c) failed to properly supervise a licensee as a property manager;
 - (d) permitted the said licensee to manage approximately forty (40) rental units and two (2) strata corporations when his licence was restricted to him performing limited property management portfolio did not exceed thirty (30) apartments/condominiums or ten (10) single family homes; and

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- (e) was not in regular attendance at the property management division of the branch office and was not in active charge of the business of the agent there conducted.
12. The Committee decided to reprimand Mr. Browne and ordered that another audit of all trust accounts at the agent's branch office be conducted. Mr. Browne was ordered to complete Chapter 4 (Introduction to Financial Statements) in the agent's pre-licensing course and also to complete the property management supplemental course and examination by April 30, 1998.
13. Mr. Browne entered into a Consent Order with the Council dated March 23, 2005 and consented to an Order that he was negligent within the meaning of section 9.12 of Regulation 75/61 of the former *Real Estate Act* in that with respect to the November 15 offer, was not in active charge of the transaction because as nominee, he failed to ensure that a salesperson under Browne's supervision, complied in the circumstances with the Council's policy to recommend to each of the buyers that they seek separate, independent legal advice about the deposit arrangements before entering into the contract of purchase and sale made November 15, 2002.
14. Mr. Browne's nominee's licence was suspended for seven days and that as a condition of continued licensing, he enroll in and attend the first available Continuing Professional Education Course, Legal Update, and to pay enforcement expenses to the Council in the amount of \$500.00 within thirty (30) days of the date of the Order herein.
15. On September 12, 2006 Mr. Browne was issued a letter of warning as follows:

The Council noted that as managing broker, in your oversight of Mr. McMillan you should have taken charge of matters pursuant to section 3-1 of the Council Rules.

In particular you should have promptly and fully responded to the Council's correspondence and queries as to Mr. McMillan's conduct in respect of 103 – 8485 Young Road, Chilliwack, BC in accordance with section 37 of the *Real Estate Services Act* and section 2(19) of the Council Rules, especially as this was a property listed by Homelife Glenayre on behalf of the owners and had been the subject of an earlier sale to BE and JP; and

You should have dealt directly with brokerage clients instead of relying on Mr. McMillan when his reliability as a licensee had come into question and when it was agreed that he would be resigning from the business:

- (a) in respect of 103 – 8485 Young Road, Chilliwack, BC, when the assignees' son indicated that there may be a problem with the assignment

and you relied on Mr. McMillan to advise the assignors/brokerage clients, Mr. P and Ms. E.; and,

- (b) in respect of 124 – 8485 Young Road, Chilliwack, BC, when you relied on Mr. McMillan to advise a brokerage client to seek independent legal advice when you became aware that the buyer may be unable to complete her purchase.

F. Proposed Acceptance of Findings and Waiver

1. Based on the Agreed Statement of Facts as outlined herein, and without making any admissions of liability, Homelife Glenayre Realty Chilliwack Ltd. and Allan Charles Browne are prepared to accept the following findings if made against them by the Council's Consent Order Review Committee:
 - (a) Homelife Glenayre Realty Chilliwack Ltd. committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that it:
 - (i) contravened section 5-11(2)(b) of the Council Rules in that between April 1, 2010, and October 22, 2012, it failed to disclose to its strata corporation client in its written services agreement the amount of the fees it charged to owners when a reminder letter was required to be sent for nonpayment of strata fees and also the amount of an NSF charge to the owners when a strata fee cheque was returned by the financial institution as NSF.
 - (b) Mr. Browne committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he contravened section 3-1(1)(b) of the Council Rules in that he failed to ensure that the business of the brokerage was carried out competently and in accordance with the Act, regulations, rules and bylaws in that he:
 - (i) permitted the brokerage to enter into an arrangement with an afterhours emergency services provider to provide first responder emergency services to the strata corporation directly without first obtaining a direction from the strata manager or the brokerage;
 - (ii) failed to ensure that the written services agreement stipulated the amount of the fees charged by the brokerage to the owners for late payment of strata fees, and also the fees charged for NSF cheques paid by the owners.
 2. Homelife and Mr. Browne hereby waive their right to appeal pursuant to section 54 of the *Real Estate Services Act*.

3. Homelife and Mr. Browne 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. Homelife and Mr. Browne 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. Homelife and Mr. Browne 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.

"David P. Berger"

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

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

Dated 27th day of June, 2014

"Allan Charles Browne"

Allan Charles Browne

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

Dated 25th day of June, 2014

"Allan Charles Browne"

**Allan Charles Browne on behalf of Homelife
Glenayre Realty Chilliwack Ltd.**

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

Dated 25th day of June, 2014