

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

**IN THE MATTER OF
DOUGLAS FRANK FAIRLEY**

CONSENT ORDER

RESPONDENTS: Douglas Frank Fairley, Managing
Broker, 707874 BC Ltd. dba
RE/MAX First Realty

DATE OF REVIEW MEETING: October 20, 2015

DATE OF CONSENT ORDER: October 26, 2015

CONSENT ORDER REVIEW COMMITTEE: H. Exner
S. Ghose, Chair

ALSO PRESENT: R.O. Fawcett, Executive Officer
G. Thiele, Director, Legal Services
D. Berger, Legal Counsel for the Real
Estate Council

PROCEEDINGS:

On October 20, 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 Douglas Frank Fairley.

WHEREAS the ASF, a copy of which is attached hereto, has been executed by Douglas Frank Fairley and on behalf of the Council;

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

1. be reprimanded.

If Douglas Frank Fairley fails to comply with any term of this Order, the Council may suspend or cancel his licence without further notice to him, pursuant to sections 43(3) and 43(4) of the *Real Estate Services Act*.

Dated this 26th day of October, 2015 at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

“S. Ghose”

S. Ghose, Chair
Consent Order Review Committee

Atch.

File #11-296

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

IN THE MATTER OF

**DOUGLAS FRANK FAIRLEY (FRANK FAIRLEY)
(030712)
(030712-1)
(030712-2)
(030712-3)**

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

-
- A. The following agreement has been reached between Douglas Frank Fairley (Frank Fairley) (“Mr. Fairley”) and the Real Estate Council of British Columbia (the “Council”).
- B. Mr. Fairley, hereby consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* (“RESA”) that he be reprimanded.
- C. Mr. Fairley further consents to an Order that if he fails to comply with any of the terms of the Order set out above, a Discipline Hearing Committee may suspend or cancel his licence without further notice to him pursuant to section 43(3) and 43(4) of the *Real Estate Services Act*.
- D. As a basis for this Order, Mr. Fairley acknowledges and agrees that the facts set forth herein are correct:
1. Mr. Fairley was at all relevant times licensed as managing broker at 707874 B.C. Ltd. dba RE/MAX First Realty (“RE/MAX First Realty”).
 2. Mr. Fairley’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>
19/01/2006	Present	707874 B.C. Ltd. dba RE/MAX First Realty (X028342)	Managing Broker	Trading, Rental, Strata

06/12/2004	19/01/2006	707874 B.C. Ltd. dba RE/MAX First Realty (X028342)	Managing Broker	Trading, Rental
01/06/1999	06/12/2004	Nanaimo Realty (Seaside) Ltd. (NseBy) dba Royal LePage Parksville - Qualicum Breach Realty (NseBy) (X026864)	Managing Broker	Trading, Rental
05/05/1993	01/06/1999	Fairwinds Realty Ltd. dba Realty World - Fairwinds Realty (X018841)	Managing Broker	Trading, Rental
19/11/1991	05/05/1993	Fairwinds Realty Ltd. dba Realty World - Fairwinds Realty (X018841)	Associate Broker	Trading, Rental
17/07/1990	19/11/1991	Fairwinds Realty Ltd. dba Realty World - Fairwinds Realty (X018841)	Representative	Trading, Rental
22/02/1988	17/07/1990	Golden West Realty Ltd. (X010610)	Representative	Trading, Rental
29/12/1984	21/02/1988	*** Unlicensed ***	N/A	N/A
01/02/1983	28/12/1984	Golden West Realty Ltd. (X010610)	Representative	Trading, Rental
30/06/1982	31/01/1983	Block Bros. Realty Ltd. (Pkv)(Old) (X000349)	Representative	Trading, Rental

Secondary Licence 030712-1

23/01/2006	Present	707874 B.C. Ltd dba RE/MAX First Realty (X028342)	Brokerage	Trading, Rental, Strata
06/12/2004	23/01/2006	707874 B.C. Ltd dba RE/MAX First Realty (X028342)	Brokerage	Trading, Rental

Secondary Licence 030712-2

29/08/2014	Present	1004227 B.C. Ltd. dba RE/MAX Ocean Pointe Realty (X031238)	Managing Broker	Trading, Rental
------------	---------	--	--------------------	--------------------

Secondary License 030712-3

29/08/2014	Present	1004227 B.C. Ltd. (Chmns) dba RE/MAX Ocean Pointe Realty (Chmns) (X031239)	Managing Broker	Trading, Rental
------------	---------	---	--------------------	--------------------

3. Mr. T. Kerr was licensed as a representative at RE/MAX First Realty until September 1, 2012 at which point he became licensed as managing broker of The Kerr Group Management Corporation.
4. Mr. W. Kerr was licensed as a representative at RE/MAX First Realty until September 21, 2012 at which point he became licensed as a representative at The Kerr Group Management Corporation.
5. Ms. Kerr was licensed as a representative at RE/MAX First Realty until September 28, 2012 at which point she became licensed as a representative at The Kerr Group Management Corporation.
6. In 2006, Mr. W. Kerr and Ms. Kerr incorporated the company BC0866409 that would later become the Kerr Group Management Corporation. At this time the Kerrs were licensed with RE/MAX First Realty. Mr. T. Kerr became licensed with RE/MAX First Realty on June 29, 2010.
7. On September 11, 2009 a service agreement was signed between Strata Plan VISXX62 ("Strata VISXX62"), RE/MAX First Realty, and Mary & Bill Kerr Strata Management, an unlicensed entity and unauthorized team name.
8. On November 1, 2009 RE/MAX First Realty sent an invoice on behalf of their client, Strata VISXX62 for developer strata fees in the name of Mary & Bill Kerr Strata Management, an unlicensed entity and unauthorized team name.
9. On April 29, 2010 the team name "The Kerr Group" was approved by Council. The licensees in this group were Mr. W. Kerr, Mr. T. Kerr and Ms. Kerr. Mr. T. Kerr was registered as a member of the team, although not licensed at this time as he subsequently became licensed with RE/MAX First Realty on June 29, 2010 and remained as a member of this team.
10. On November 18, 2010 RE/MAX First Realty sent a Deficiency Addendum and Warranty Certificate and Claim Number to Strata VISXX62 with letterhead that displayed the name "The Kerr Group Strata Management", an unlicensed entity and unauthorized team name.

11. On February 9, 2012, a work order for Strata VISXX62 was issued to a contractor by The Kerr Group Strata Management, an unlicensed entity and unauthorized team name.
12. During an Office and Records Re-Inspection Report for RE/MAX First Realty, conducted by Council auditors on May 23 and May 24, 2012, it was noted that:
 - (a) the strata management division of the brokerage was operated from an unlicensed office located at 733 Renz Road, Parksville and not at the office of RE/MAX First Realty, the licensed brokerage office;
 - (b) clients and maintenance vendors would attend the office at 733 Renz Road to discuss strata matters;
 - (c) the website www.thekerrgroup.ca listed 733 Renz Road as the office address for strata management services;
 - (d) a separate telephone number was listed on www.thekerrgroup.ca and answered in the name of “The Kerr Group”;
 - (e) a sign stating “The Kerr Group” was erected on the outside of the office at 733 Renz Road;
 - (f) Ms. Kerr, Mr. T. Kerr, Mr. W. Kerr, and H.K. were referred to as “The Kerr Group Management Corporation” on www.remax-first.bc.ca and on www.thekerrgroup.ca; and
 - (g) “The Kerr Group Management Corporation” was advertised on letterhead and business cards for the strata management services division.
13. It was noted by Mr. Fairley in his response to Council dated July 16, 2015, that the Kerrs set up the Renz Road office because they required more space. Furthermore Mr. Fairley contended that this office was not meant to replace their main office at RE/MAX First Realty.
14. On August 1, 2012, an invoice was sent to an owner of a unit in Strata VISXX62 from RE/MAX First Realty, on letterhead reading “The Kerr Group Management Corporation”, an unlicensed entity and unauthorized team name.
15. On September 1, 2012, The Kerr Group Management Corporation was licensed as a brokerage. Mr. T. Kerr became the managing broker.
16. On October 1, 2012, The Kerr Group Management Corporation processed preauthorized debits for 22 strata corporations with which RE/MAX First Realty had service agreements. The preauthorized debits were made in the name of RE/MAX First Realty and not The Kerr Group Management

Corporation. Mr. Fairley contends that he did not permit, allow, discuss or make any arrangements for the Kerr Group Management Corporation to process any pre-authorized debits from the accounts of RE/MAX First Realty's strata clients.

17. On October 5, 2012, an Assignment and Assumption Agreement assigning the service agreements of the above mentioned strata corporations from RE/MAX First Realty to The Kerr Group Management Corporation was signed.

E. Proposed Acceptance of Findings and Waiver

1. Based on the Agreed Statement of Facts as outlined herein, and without making any admissions of liability, Douglas Frank Fairley (Frank Fairley), as managing broker, is prepared to accept the following findings if made against him by the Council's Consent Order Review Committee:

(a) Douglas Frank Fairley (Frank Fairley) committed professional misconduct within the meaning of section 35(1)(a) of RESA by contravening sections 3-1(1)(b) and (c) of the Council Rules in that he failed to ensure that the business of 707874 B.C. Ltd. dba RE/MAX First Realty ("RE/MAX First Realty") was carried out competently and in accordance with the Act, Regulations, Rules and Bylaws, and failed to ensure adequate supervision of licensees of the Brokerage contrary to section 6(2)(c) of RESA in that he:

(i) permitted RE/MAX First Realty to provide real estate services and advertise those services through an office located at 733 Renz Road, Parksville, B.C. (the "Renz Road Office"), which was not licensed as a branch office from at least February 12, 2012 to September 28, 2012, without complying with section 4-3 of the Council Rules and contrary to sections 3(1)(a) and 5(4) of RESA, and contrary to section 4-6 of the Council Rules;

(ii) failed to ensure adequate supervision of William (Bill) John Seger Kerr and Mary Edith Kerr, by permitting them to:

(I) provide real estate services, and advertise such services as "Mary and Bill Kerr Strata Management" and "The Kerr Group", when these were not registered team names, from approximately November 2009, until April 29, 2010, contrary to sections 4-6(4) and 4-6(5) of the Council Rules and section 3 of RESA; and

(iii) permitted Terrance (Terry) William John Kerr, William (Bill) John Seger Kerr, and Mary Edith Kerr to:

- (I) provide real estate services and advertise such services as “The Kerr Group Strata Management” and “The Kerr Group Management Corporation” in February 2012, when neither of which were licensed entities nor were they approved team names, contrary to sections 4-6 and 4-7 of the Council Rules and section 3 of RESA.
- 3. Mr. Fairley hereby waives his right to appeal pursuant to section 54 of the *Real Estate Services Act*.
- 4. Mr. Fairley acknowledges that he has a right to seek independent legal advice before signing this Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver.
- 5. Mr. Fairley 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.
- 6. Mr. Fairley 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 decision of the Council, including this Agreed Statement of Facts, Proposed Acceptance of Findings, and Waiver and Consent Order.
- 7. 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 Berger”

“Douglas Frank Fairley”

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

Douglas Frank Fairley

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 4th day of August, 2015

Dated 31st day of July, 2015