

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

IN THE MATTER OF

WILLIAM (BILL) JOHN SEGER KERR

TERRANCE (TERRY) WILLIAM JOHN KERR

MARY EDITH KERR

AND

THE KERR GROUP MANAGEMENT CORPORATION

CONSENT ORDER

RESPONDENTS:

William (Bill) John Seger Kerr,
currently unlicensed, while licensed as
a Representative with The Kerr Group
Management Corporation

Terrance (Terry) William John Kerr,
Managing Broker, The Kerr Group
Management Corporation

Mary Edith Kerr, Representative, The
Kerr Group Management Corporation

The Kerr Group Management
Corporation, Brokerage

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 William (Bill) John Seger Kerr, Terrance (Terry) William John Kerr, Mary Edith Kerr and The Kerr Group Management Corporation.

WHEREAS the ASF, a copy of which is attached hereto, has been executed by William (Bill) John Seger Kerr, Terrance (Terry) William John Kerr, Mary Edith Kerr and The Kerr Group Management 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 William (Bill) John Seger Kerr, Terrance (Terry) William John Kerr, Mary Edith Kerr and The Kerr Group Management Corporation committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*, orders that:

1. William (Bill) John Seger Kerr, Terrance (Terry) William John Kerr, Mary Edith Kerr and The Kerr Group Management Corporation each be reprimanded;
2. The Kerr Group Management Corporation pay a discipline penalty to the Council in the amount of \$1,500.00 within ninety (90) days from the date of this Order;
3. The Kerr Group Management Corporation pay the costs of the audits in the amount of \$877.50 (\$75.00 x 11.7 hours) within sixty (60) days of the date of this Order; and
4. William (Bill) John Seger Kerr, Terrance (Terry) William John Kerr, Mary Edith Kerr and The Kerr Group Management Corporation 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 William (Bill) John Seger Kerr, Terrance (Terry) William John Kerr, Mary Edith Kerr and The Kerr Group Management Corporation fail to comply with any term of this Order,

**William (Bill) John Seger Kerr
Terrance (Terry) William John Kerr
Mary Edith Kerr and
The Kerr Group Management Corporation**

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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 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

Attch.

File #11-296, 13-100, 13-125

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

IN THE MATTER OF

**TERRANCE (TERRY) WILLIAM JOHN KERR
(159397)**

**WILLIAM (BILL) JOHN SEGER KERR
(150875)**

**MARY EDITH KERR
(141112)**

**THE KERR GROUP MANAGEMENT CORPORATION
(X030572)**

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

- A. The following agreement has been reached between Terrance (Terry) William John Kerr (“Mr. T. Kerr”), William (Bill) John Seger Kerr (“Mr. W. Kerr”), Mary Edith Kerr (“Ms. Kerr”), and The Kerr Group Management Corporation (collectively, the “Kerr Group”) and the Real Estate Council of British Columbia (the “Council”).
- B. Mr. T. Kerr, Mr. W. Kerr, who is currently unlicensed since January 23, 2015, whose licence expired on January 23, 2015, and Ms. Kerr hereby consent to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* (“RESA”) that they each be reprimanded.
- C. The Kerr Group Management Corporation hereby consents to an Order to be made pursuant to sections 41 and 43 of RESA that it be reprimanded and that it pay a discipline penalty to the Council in the amount of \$1,500.00 within ninety (90) days from the date of the Order herein. It further consents to an Order that it pay the cost of the audits herein in the amount of \$877.50 (\$75.00 x 11.7 hours) within sixty (60) days from the date of the Order herein.
- D. Mr. T. Kerr, Mr. W. Kerr, Ms. Kerr and the Kerr Group Management Corporation further agree 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.

- E. Mr. T. Kerr, Mr. W. Kerr, Ms. Kerr and The Kerr Group Management Corporation 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*.

File #11-296 (Mr. T. Kerr, Mr. W. Kerr, and Ms. Kerr Only)

- F. As a basis for this Order, Mr. T. Kerr, Mr. W. Kerr and Ms. Kerr acknowledge and agree that the facts set forth herein are correct:

1. 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.

2. Mr. T. Kerr'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>
28/09/2012	Present	The Kerr Group Management Corporation (X030572)	Managing Broker	Rental, Strata
01/09/2012	28/09/2012	The Kerr Group Management Corporation (X030572)	Managing Broker	Strata
29/06/2010	01/09/2012	707874 B.C. Ltd. DbA RE/MAX First Realty (X028342)	Representative	Strata

3. 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.

4. Mr. W. Kerr'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>
21/09/2012	23/01/2015	The Kerr Group Management Corporation	Representative	Strata

(X030572)

24/01/2007 21/09/2012 707874 B.C. Ltd. Db
 RE/MAX First Realty
 (X028342) Representative Strata

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. Ms. Kerr'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>
28/09/2012	Present	The Kerr Group Management Corporation (X030572)	Representative	Rental, Strata
23/01/2006	28/09/2012	707874 B.C. Ltd. dba RE/MAX First Realty (X028342)	Representative	Rental, Strata
22/02/2005	23/01/2006	707874 B.C. Ltd. dba RE/MAX First Realty (X028342)	Representative	Rental
11/01/2005	22/02/2005	Anchor Realty Ltd. dba RE/MAX Anchor Realty (X019575)	Representative	Rental

7. 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.
8. 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.
9. 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.

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10. 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.
 11. 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.
 12. 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.
 13. 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 a home-based office located at 733 Renz Road, Parksville and not at the licensed office of RE/MAX First Realty, the licensed office of the brokerage.
 - (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.
 14. The managing broker of RE/MAX First Realty was aware and consented to all of the facts in items 13(a) to (g) above, in a separate Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver which was signed by him.

15. The Kerrs state that they never operated out of the licensed office of RE/MAX First Realty for the strata management division of RE/MAX First Realty. They state that they set up the Renz Road office because they required more space. Furthermore, they contend that this office was not meant to replace their main office at RE/MAX First Realty. They state that this was done with the knowledge and consent of the managing brokers of RE/MAX First Realty. They further state that the Council conducted audits of the brokerage in 2010 and it was only after an office and records inspection in May 2012 that the Kerrs were notified that the office may not be in compliance.
16. An office and records inspection report dated June 27, 2012 concluded that they were operating an unlicensed branch office at 733 Renz Road and this was discussed with the managing broker and he agreed to implement necessary requirements noted in the report.
17. 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.
18. The Kerrs acknowledge that during the period from September 11, 2009 to August 1, 2012 as set out above, the use of an unlicensed entity and an unauthorized team name was the same ongoing infraction. There were no complaints from their clients about this or harm caused to their clients and their brokerage RE/MAX First Realty did not advise them to correct the infraction.
19. On September 1, 2012, The Kerr Group Management Corporation was licensed as a brokerage. Mr. T. Kerr became the managing broker. The Kerrs state that the problem arose because when applying for a brokerage licence, the applicant was not able to select the exact start date of when it would like to become a licensed brokerage. Therefore, the licensed brokerage was established for September 1, 2012 while the intended separation from RE/MAX First Realty was communicated to and agreed by all relevant parties and the clients to be on October 1, 2012.
20. On October 1, 2012, The Kerr Group Management Corporation processed preauthorized debits for 22 strata corporations in the name of the Kerr Group Management Corporation with which RE/MAX First Realty had service agreements. The Kerrs state that they had processed strata fees for 22 strata corporations as they had every month previous, when the strata corporation was under management by RE/MAX First Realty. The Kerrs state that the strata corporations witnessed no change or disruption to services being provided by them. They state that while they took some steps to have every person on preauthorized debit to sign a new preauthorized debit with them in place of RE/MAX First Realty, they acknowledged that they should have had the

service agreements assigned to the Kerr Group Management Corporation before processing any preauthorized debits under their name. The Kerrs state that RE/MAX First Realty was aware of and consented to every step they took to separate out its business, dating back to July 2012.

21. 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. The Kerrs state that the managing broker was away on vacation which was the reason why the Assumption Agreements were not signed and received until October 5, 2012.

File #13-125 (The Kerr Group Only)

- G. As a basis for this Order, Mr. T. Kerr and Mr. T. Kerr on behalf of the Kerr Group Management Corporation, Mr. W. Kerr, and Ms. Kerr acknowledge and agree that the facts set forth herein are correct:

22. At all relevant times, Mr. T. Kerr was licensed as managing broker of The Kerr Group Management Corporation.

23. The Kerr Group Management Corporation'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>
2012/09/28	Present	The Kerr Group Management Corporation (X030572)	Brokerage	Rental, Strata
2012/09/01	2012/09/28	The Kerr Group Management Corporation (X030572)	Brokerage	Strata

24. 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. 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.

25. On September 17, 2012, Strata Council minutes for Strata Plan VISXX02 were provided by the Kerr Group Management Corporation, approximately 3 weeks before the service agreement for that strata had been assigned to the Kerr Group Management Corporation by RE/MAX First Realty.

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26. An Office and Records Inspection Report for The Kerr Group Management Corporation, conducted by Council auditors on November 7, 2012, found that:
- (a) The Kerr Group Management Corporation (BC0866409) was licensed on September 1, 2012, but on October 16, 2012, it had changed its name to The Kerr Group Management Holdings Corporation. The brokerage did not request or receive permission from Council to change the licensed name of the brokerage. On October 19, 2012, a new company (BC0953111) was incorporated under the name of The Kerr Group Management Corporation. This company was not licensed. Mr. T. Kerr acknowledged that the brokerage's real estate services were being conducted through this unlicensed entity, stating that the Kerr Group Management Corporation had changed its name on advice from their accountant who had suggested setting up a separate holding company to hold the assets of the Kerr Group Management Corporation separate from the operating company.
 - (b) On October 2, 2012, licensees of the Kerr Group Management Corporation transferred trust monies out of contingency reserve fund trust accounts held by RE/MAX First Realty, to new accounts held by The Kerr Group Management Corporation. Mr. T. Kerr acknowledged that the licensees did not inform RE/MAX First Realty of these transfers.
 - (c) The Kerrs state that while they may not have notified RE/MAX First Realty specifically with respect to this particular transfer, they did notify RE/MAX First Realty in their face-to-face meetings that the Kerr Group Management Corporation would facilitate the required transactions of which they did not object. The Kerrs state that the accounts of every single of the 22 strata corporations managed by them were properly balanced and this did not negatively impact the clients in any way.
 - (d) Documentation relating to the assignment of strata management service agreements from RE/MAX First Realty to The Kerr Group Management Corporation revealed that the brokerage and/or licensees of the brokerage appeared to be providing strata management services (collecting strata fees, holding trust funds, and authorizing payments to third parties) prior to the actual assignment date of the service agreements on October 5, 2012. Mr. T. Kerr admitted that this was done in an effort to produce a smooth transition for clients during the switch from strata management services being provided RE/MAX First Realty to those services being provided by The Kerr Group Management Corporation.
27. In relation to paragraph 26(a) above, Mr. T. Kerr states that this was brought to his attention by a Council auditor on January 10, 2013 and the name of the

company was corrected to its original licensed name, “The Kerr Group Management Corporation”, as of January 15, 2013 as there was an intervening weekend.

File 13-100 (The Kerr Group Management Corporation and Mr. T. Kerr Only)

- H. As a basis for this Order, Mr. T. Kerr and The Kerr Group Management Corporation acknowledge and agree that the facts set forth herein are correct:
28. At all relevant times Mr. T. Kerr was licensed as managing broker of The Kerr Group Management Corporation.
 29. The Kerr Group Management Corporation began providing strata management services to Strata Plan VISXX98 (“Strata VISXX98”) on October 5, 2012, following the assignment of 22 strata managements contracts to the Kerr Group Management Corporation from RE/MAX First Realty. The Kerr Group Management Corporation stopped providing strata management services to Strata VISXX98 On February 28, 2013.
 30. An Office and Records Inspection Report for The Kerr Group Management Corporation, conducted by Council auditors on July 30, 2013, found several issues related to The Kerr Group Management Corporation’s management of Strata VISXX98:
 - (a) there were no Strata Council members listed as signatories on the brokerage trust accounts for Strata VISXX98. The signatory from Strata VISXX98 was J.O., an accountant at the resort.
 31. The Kerr Group states that this was a technical violation of section 7-9(6) of the Council Rules and did not negatively affect the clients. They state that there was a passed resolution by a $\frac{3}{4}$ vote of the owners of the strata corporation which was consistent with the *Strata Property Act* detailing that the authorized party who had signed on behalf of the corporation was J.O., who was not a strata council member. It was later detailed to the Kerr Group that this was a violation of section 7-9(6) of the Council Rules. However, the strata, being a resort property, had no council members that resided on site or who could be available to sign cheques. Further, this did not negatively affect the client in any way.
 32. The July 30, 2013 Office and Records Inspection Report for The Kerr Group also found the following accounting issues:

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- (a) the pooled rental trust account and security deposit trust account revealed that there was no corresponding trust liability accounts on the balance sheets;
 - (b) monthly reconciliations for the pooled rental trust account and pooled rental security deposit accounts could not be provided during the inspection for any month requested;
 - (c) monthly bank reconciliations for the brokerage general account revealed that the bank reconciliations did not include a date of preparation within the time required under the Council Rules;
 - (d) monthly reconciliations for the strata trust accounts revealed that the reconciliations did not include a date to evidence preparation within the time required under the Council Rules;
 - (e) no individual trust ledgers were provided for the pooled trust accounts, nor was a liability listing prepared and reconciled to the trust asset, as required under the Council Rules; and
 - (f) interest had been credited to the rental property management trust account. The interest was not retained in the account, nor was it forwarded to the Real Estate Foundation.
33. The Kerr Group states that all documentation that was not available during the records inspection was subsequently provided to the Council.
 34. The Kerr Group states that there were no complaints against any of the said parties from a member of the public and that none of the contraventions noted here resulted in any negative impact to the clients.
 35. Mr. T. Kerr, Mr. W. Kerr, Ms. Kerr and The Kerr Group Management Corporation do not have a discipline record with the Council.

I. Proposed Acceptance of Findings and Waiver

File #11-296 (Mr. T. Kerr, Mr. W. Kerr, and Ms. Kerr Only)

1. Based on the Agreed Statement of Facts as outlined herein, and without making any admissions of liability, Terrance (Terry) William John Kerr, William (Bill) John Seger Kerr, and Mary Edith Kerr are prepared to accept the following findings if made against them by the Council's Consent Order Review Committee:
 - (a) William (Bill) John Seger Kerr, and Mary Edith Kerr committed professional misconduct within the meaning of section 35(1)(a) of RESA in that they:
 - (i) provided real estate services, and advertised 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;
 - (b) Terrance (Terry) William John Kerr, William (Bill) John Seger Kerr, and Mary Edith Kerr committed professional misconduct within the meaning of section 35(1)(a) of RESA in that they:
 - (i) provided real estate services and advertised 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.

File #13-125 (The Kerr Group Only)

1. Based on the Agreed Statement of Facts as outlined herein, and without making any admissions of liability, The Kerr Group Management Corporation is prepared to accept the following findings if made against it by the Council's Consent Order Review Committee:
 - (a) The Kerr Group Management Corporation committed professional misconduct within the meaning of section 35(1)(a) of RESA in that it:
 - (i) on October 16, 2012, changed its name from "The Kerr Group Management Corporation" to "The Kerr Group Management

Holdings Corporation” without the approval of the Council contrary to section 4-4 of the Council Rules; and

- (ii) from October 19, 2012 to January 15, 2013 permitted an unlicensed newly incorporated company, to provide real estate services to the clients of The Kerr Group Management Corporation contrary to section 3(1) of RESA.
2. Based on the Agreed Statement of Facts as outlined herein, and without making any admissions of liability, William (Bill) John Seger Kerr and Mary Edith Kerr are prepared to accept the following findings if made against them by the Council’s Consent Order Review Committee:
 - (a) William (Bill) John Seger Kerr and Mary Edith Kerr committed professional misconduct within the meaning of section 35(1)(a) of RESA in that they:
 - (i) provided real estate services and advertised those services, to clients of The Kerr Group Management Corporation through an unlicensed corporation from October 19, 2012 to January 15, 2013, contrary to sections 3(1) and 7(3) of RESA;
 - (ii) on October 1, 2012, processed pre-authorized debits for twenty-two strata corporation clients, of another brokerage that held valid written services agreements with each of those clients, but had not yet assigned the written services agreements to The Kerr Group Management Corporation, contrary to section 5-1(2)(c) of the Council Rules;
 - (iii) from September 1, 2012 to October 5, 2012, provided real estate services to these above mentioned clients, including collecting strata fees, paying invoices, transferring trust monies, and attending at strata council meetings, prior to the assignment of the written service agreements for each client, from the former brokerage to the Kerr Group Management Corporation, contrary to sections 5-1(1) and 5-1(2) of the Council Rules; and
 - (iv) on October 2, 2012, transferred trust monies from some or all of the Clients’ contingency reserve fund trust accounts, held by another brokerage, without ensuring that the signatories of the trust accounts complied with section 7-9(6) of the Council Rules.
3. Based on the Agreed Statement of Facts as outlined herein, and without making any admission of liability, Terrance (Terry) William John Kerr, as managing

broker, is prepared to accept the following findings if made against him by the Council's Consent Order Review Committee:

- (a) Terrance (Terry) William John Kerr 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 The Kerr Group Management Corporation was carried out competently and in accordance with the Act, Regulations, Rules and Bylaws, and failed to ensure adequate supervision of licensees contrary to section 6(2)(c) of RESA in that he:
 - (i) failed to obtain the approval of the Council and subsequently inform the Council, that the name of The Kerr Group Management Corporation had changed to "The Kerr Group Management Holdings Corporation" on October 16, 2012, contrary to section 4-4(1) of RESA;
 - (ii) permitted an unlicensed corporation to provide real estate services and advertise those services, to clients of The Kerr Group Management Corporation, from October 19, 2012 to January 15, 2013, and permitted the licensees of The Kerr Group Management Corporation to provide real estate services to The Kerr Group Management Corporation's clients through the unlicensed corporation from October 19, 2012 to January 15, 2013 contrary to sections 3(1) and 7(3) of RESA;
 - (iii) on October 1, 2012, permitted The Kerr Group Management Corporation to process pre-authorized debits for twenty-two strata corporation clients of another brokerage that held valid written services agreements with each of the clients, but had not yet assigned the written services agreements to The Kerr Group Management Corporation contrary to sections 5-1(2)(c) of the Council Rules;
 - (iv) from September 1, 2012 to October 5, 2012, permitted The Kerr Group Management Corporation and its licensees to provide real estate services to these above mentioned clients, including collecting strata fees, paying invoices, transferring trust monies, and attending at strata council meetings, prior to the assignment of the written services agreements for each client, from the former brokerage to The Kerr Group Management Corporation, contrary to sections 5-1(1) and 5-1(2) of the Council Rules; and

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- (v) on October 2, 2012, permitted licensees engaged by The Kerr Group Management Corporation to transfer trust monies from some or all of these clients' contingency reserve fund trust accounts, held by another brokerage, without ensuring that the signatories of the trust accounts complied with section 7-9(6) of the Council Rules.

File #13-100 (The Kerr Group Management Corporation and Mr. T. Kerr Only)

1. Based on the Agreed Statement of Facts as outlined herein, and without making any admissions of liability, The Kerr Management Corporation is prepared to accept the following findings if made against it by the Council's Consent Order Review Committee:
- (a) The Kerr Group Management Corporation committed professional misconduct within the meaning of section 35(1)(a) of RESA in that it:
- (i) held a Contingency Reserve Fund trust account on behalf of Strata VISXX98 in which a delegate of the Strata VISXX98 was a signatory to the Contingency Reserve Fund Trust account which was authorized by the strata corporation, but the said signing authority was not a strata council member, contrary to section 7-9(6) of the Council Rules;
- (ii) failed to prepare and retain the following records:
- (I) separate trust ledger for each principal showing all amounts received and disbursed in relation to the principal and any unexpected balance in relation to that principal, and
- (II) a monthly trust, liability and asset reconciliation, listing every person for which the brokerage holds trust money and the amount being held by each person, and within 5 weeks of the end of the month being reconciled;
- contrary to section 8-3 of the Council Rules and section 25 of RESA;
- (iii) failed to pay to the Real Estate Foundation interest credited by a financial institution on monies in pooled trust accounts held by the brokerage contrary to section 29 of RESA.
2. Based on the Agreed Statement of Facts as outlined herein, and without making any admissions of liability, Terrance (Terry) William John Kerr, as managing

broker, is prepared to accept the following findings if made against him by the Council's Consent Order Review Committee:

- (a) permitted The Kerr Group Management Corporation to hold the Contingency Reserve Fund trust account for Strata VISXX98 contrary to the requirements set out in section 7-9(6) of the Council Rules, in that a delegate of the VISXX98 was a signatory to the account and not a strata council member;
- (b) failed to ensure that the following records were prepared and retained by the brokerage:
 - (i) a separate trust ledger for each principal showing all amounts received and disbursed in relation to the principal and any unexpected balance in relation to that principal, and
 - (ii) a monthly trust, liability and asset reconciliation, listing every person for which the Brokerage holds trust money and the amount being held by each person, and within 5 weeks of the end of the month being reconciled;

contrary to section 8-3 of the Council Rules and section 25 of RESA; and

- (iii) failed to pay to the Real Estate Foundation interest credited by a financial institution on monies in pooled trust accounts held by The Kerr Group Management Corporation contrary to section 29 of RESA.

Files 11-296, 13-125 and 13-100

3. The Kerr Group hereby waives its right to appeal pursuant to section 54 of the *Real Estate Services Act*.
4. The Kerr Group acknowledges that it has a right to seek independent legal advice before signing this Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver.
5. The Kerr Group Management Corporation 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. The Kerr Group 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”

“Terrance Kerr”

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

Terrance (Terry) William John Kerr

**As to Parts F, G and H only (Agreed
Statement of Facts)**

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

Dated 18th day of August, 2015

Dated 14th day of August, 2015

“William Kerr”

William (Bill) John Seger Kerr

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

Dated 17th day of August, 2015

“Mary Kerr”

Mary Edith Kerr

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

Dated 17th day of August, 2015

“Terrance Kerr”

**Terrance (Terry) William John Kerr on behalf
of The Kerr Group Management Corporation**

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

Dated 14th day of August, 2015