

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

**IN THE MATTER OF
IAN JAMES MACKAY**

CONSENT ORDER

RESPONDENT: Ian James Mackay, Managing Broker,
IJM Properties Ltd.

DATE OF REVIEW MEETING: December 7, 2015

DATE OF CONSENT ORDER: December 29, 2015

CONSENT ORDER REVIEW COMMITTEE: C. Lindberg
S. Lynch, Chair
S. McGougan
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 Ian James Mackay.

WHEREAS the ASF, a copy of which is attached hereto, has been executed by Ian James Mackay 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 Ian James Mackay committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*, orders that Ian James Mackay:

1. be reprimanded;

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2. pay a discipline penalty to the Council in the amount of \$1,500.00 within ninety (90) days of the date of this Order;
 3. at his own expense, register for and successfully complete the Broker's Remedial Education Course in the time period as directed by the Council; and
 4. 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 Ian James Mackay 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 29th day of December, 2015 at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

“S. Lynch”

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
IAN JAMES MACKAY
(009035)

AGREED STATEMENT OF FACTS,
PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

The following agreement has been reached between Ian James MacKay (“Mr. MacKay”) and the Real Estate Council of British Columbia (the “Council”).

A. Mr. MacKay 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 and that he 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. Further, he agrees to, at his own expense, successfully complete the Managing 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. Further, he 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. Mr. MacKay 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 RESA.

B. As a basis for this Order, Mr. MacKay acknowledges and agrees that the facts set forth herein are correct:

1. Mr. MacKay was at all relevant times licensed as a managing broker with IJM Properties Ltd.

2. Mr. MacKay’s licensing history is as follows:

<u>Start Date</u>	<u>End Date</u>	<u>Brokerage</u>	<u>Licence Level</u>	<u>Licence Category</u>
30/11/2005	Present	IJM Properties Ltd. (X020914)	Managing Broker	Trading, Rental, Strata

30/11/1989	30/11/2005	IJM Properties Ltd. (X020914)	Managing Broker	Trading, Rental
20/12/1985	30/11/1989	Hannah, Mcclery Properties Ltd. (X001415)	Associate Broker	Trading, Rental
04/06/1984	20/12/1985	Hannah, Mcclery Properties Ltd. (X001415)	Representative	Trading, Rental

3. The Council conducted an office and records inspection on the brokerage on February 27 and 28 and March 20, 2014.
4. The office and records inspection report dated April 25, 2014 found that:
 - (a) With respect to Strata Corporation VRXXX transfers into the contingency reserve fund trust account were not being done within seven days after the end of the month in which received contrary to section 7-9(4) of the Council Rules. This was also identified in a previous office and records inspection report dated September 4, 2009; and
 - (b) The brokerage did not have two signatures on the contingency reserve fund trust account. This had also been identified in the September 4, 2009 office and records inspection report.
5. On April 28, 2014, Mr. MacKay was sent a copy of the April 28, 2014 office and records inspection report.
6. On June 2, 2014, Mr. MacKay provided a response to the office and records inspection report. He indicated that he was in the process of getting strata council signatures set up for the contingency reserve fund accounts. He anticipated that this would be completed by July 31, 2014 and he would not sign any cheques or have any transfers done from a contingency reserve fund trust account without the required signatories in place.
7. On August 21, 2014, staff from the audit department of the Council emailed Mr. MacKay following up on the required banking resolutions he previously assured staff would be completed by July 31, 2014.
8. On August 25, 2014, Mr. MacKay emailed staff in the audit department that he was having difficulty getting signatures and therefore asked for an extension to the end of September. The extension was granted. Mr. MacKay states that part of the delay was caused by the bank not providing him with the required signatory document in a prompt manner. Further, he states that the bank required that all of the signatories for each strata corporation appear on one document which necessitated him sending this document to all of the strata councils for their required signatures.

9. On October 2, 2014, Mr. MacKay requested a further extension to October 31, 2014 to provide the banking resolutions. Council staff did not grant the extension and informed Mr. MacKay that the matter was being forwarded to the compliance department.
10. On November 14, 2014, the compliance staff emailed Mr. MacKay asking for copies of the bank resolutions for VRXXX.
11. On November 28, 2014, with no response to the email, compliance staff sent a letter of enquiry requesting a response by December 18, 2014.
12. Mr. MacKay requested an extension to December 24, 2014 on December 18, 2014, which was granted to December 24, 2014.
13. On December 24, 2014, Mr. MacKay provided financial statements for VRXXX and NWSXXXX for the period of March 14, 2014 to September 2014 to confirm the brokerage was transferring contingency funds within seven days of receipt. The June 2014 financial statements for NWSXXXX disclosed no monthly contingency reserve transfers.
14. Mr. MacKay also provided a copy of the banking resolution from the bank that set up a second signatory for the trust accounts.
15. On February 6, 2015, in response to additional questions from compliance staff, Mr. MacKay provided the following comments:
 - (a) In the first response in December 2014, Mr. MacKay had provided a June 2014 financial statement for NWSXXXX, which did not record a transfer to the contingency reserve fund. Mr. MacKay clarified that the financial statement provided in his first response had been run on July 14, 2014, prior to the bank reconciliation being completed, and provided an updated June 2014 financial statement that disclosed a transfer.
 - (b) Mr. MacKay also stated that he regretted the lapse of compliance for an August 2014 transfer to the contingency reserve fund for NWSXXXX and will ensure that they are in compliance on an ongoing basis for the future.
16. Compliance staff had also asked for a copy of the November 2014 financial statements for VRXXX, which included a ledger of the monthly contingency reserve fund for the strata. It was noted that the October 2014 contingency reserve fund transfer was not made within seven days of the end of the month, but made November 28, 2014 on cheque number 667 combined with the November 2014 contingency reserve fund transfer.
17. Mr. MacKay also provided copies of the written authorization of the strata council of NWSXXXX for the disbursements made from the contingency

reserve fund in August 2014 along with copies of the related invoices and a copy of the cheque that was processed through the contingency reserve fund trust account. It was noted that there was only one signature on the contingency reserve fund trust account; that being Mr. MacKay's.

18. Mr. MacKay admits that, despite his written assurance on June 2, 2014, the brokerage failed again to transfer the contingency reserve funds for VRXXX in October 2014 to the contingency reserve fund trust account until November 28, 2014.
19. Mr. MacKay further admits that despite his written assurance on June 2, 2014 that he would not sign any cheques or have any transfers done from a contingency reserve fund trust account without the required signatories in place, he signed a contingency reserve fund trust account cheque for VRXXX on August 25, 2014 for \$8,526.00, with only his signature on the cheque.
20. Mr. MacKay states that he now has the required signatories for each strata corporation trust account.
21. Mr. MacKay 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, Ian James MacKay is prepared to accept the following findings if made against him by the Council's Consent Order Review Committee:
 - (a) Ian James MacKay, as managing broker for IJM Properties Ltd. committed professional misconduct within the meaning of section 35(1)(a) of RESA, by contravening section 3-1(1)(b) and 3-1(3)(a) of the Council Rules in that he:
 - (i) failed to ensure that the brokerage transferred contingency reserve fund ("CRF") money collected on behalf of the Brokerage's strata corporation client into the CRF trust fund within 7 days after the end of the month in which the funds were collected as required by section 7-9(4) of the Council Rules; and
 - (ii) failed to arrange for a qualified second co-signatory for the CRF trust account maintained on behalf of strata corporation VRXXX before authorizing and signing for a disbursement from that account as required by section 7-9(6) of the Council Rules.
2. Mr. MacKay hereby waives his right to appeal pursuant to section 54 of the RESA.

3. Mr. MacKay acknowledges that he has a right to seek independent legal advice before signing this Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver.
4. Mr. MacKay 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. Mr. MacKay acknowledges and is aware that the Superintendent of Real Estate has the right, pursuant to section 54 of RESA, 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 Berger”

“Ian MacKay”

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

Ian James MacKay

As to Part B only (Agreed Statement of Facts)

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

Dated 19th day of October, 2015

Dated 19th day of October, 2015