

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

AND

IN THE MATTER OF

**ALLAN CHARLES BROWNE
(015819)**

AND

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

CONSENT ORDER

RESPONDENT: Allan Charles Browne, Managing Broker, ,
Homelife Glenayre Realty Chilliwack Ltd.

Homelife Glenayre Realty Chilliwack Ltd.,
Brokerage

DATE OF REVIEW MEETING: May 17, 2017

DATE OF CONSENT ORDER: June 23, 2017

CONSENT ORDER REVIEW COMMITTEE: R. Holmes, Q.C., Chair
J. Daly
E. Mignosa
T. Styffe

ALSO PRESENT: E. Seeley, Acting Executive Officer
G. Thiele, Director, Legal Services
Jessica Gossen, Legal Counsel for the
Real Estate Council

PROCEEDINGS:

On May 17, 2017, an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver (“ASF”) submitted by Allan Charles Browne and Homelife Glenayre Realty Chilliwack Ltd. was considered by the Consent Order Review Committee (the “Committee”) but not accepted. On June 20, 2017, a revised ASF acceptable to the Committee was submitted by Allan Charles Browne and Homelife Glenayre Realty Chilliwack Ltd.

WHEREAS the ASF, a copy of which is attached hereto, has been executed by the Council and by Allan Charles Browne, on his own behalf and on behalf of Homelife Glenayre Realty Chilliwack Ltd.

NOW THEREFORE, the Committee having made the findings proposed in the attached ASF, and in particular having found that Allan Charles Browne and Homelife Glenayre Realty Chilliwack Ltd. committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*, orders that:

1. Allan Charles Browne and Homelife Glenayre Realty Chilliwack Ltd. each be reprimanded;
2. Allan Charles Browne and Homelife Glenayre Realty Chilliwack Ltd. be jointly and severally liable to pay a discipline penalty to the Council in the amount of \$3,000 within ninety (90) days of the date of this Order;
3. Allan Charles Browne and Homelife Glenayre Realty Chilliwack Ltd. be jointly and severally liable to pay enforcement expenses of this Consent Order to the Council in the amount \$1,500 within sixty (60) days from the date of this Order;
4. Homelife Glenayre Realty Chilliwack Ltd., at their own expense, be audited within the time period directed by Council;
5. Homelife Glenayre Realty Chilliwack Ltd., within the time period directed by Council, promptly provide to the Council on a monthly basis for a time period of six months, their monthly trust account reconciliations;
6. 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; and
7. Homelife Glenayre Realty Chilliwack Ltd. shall fully comply with the trust accounting and financials records requirements in the RESA and the Rules made under the RESA ("Rules") and provide training and supervision to its accounting staff to ensure compliance.

If Allan Charles Browne or Homelife Glenayre Realty Chilliwack Ltd. fails 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 23rd day of June, 2017 at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

“R. Holmes Q.C.”

R. Holmes, Q.C., Chair
Consent Order Review Committee

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

IN THE MATTER OF

**ALLAN CHARLES BROWNE
(015819)**

AND

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

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

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

- A. 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.
- B. Homelife Glenayre Realty hereby consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* that it be reprimanded.
- C. Mr. Browne and Homelife Glenayre Realty agree to be jointly and severally liable to pay a discipline penalty to the Council in the amount of \$3,000.00 within ninety (90) days from the date of the Order herein.
- D. Allan Charles Browne, at his own expense, shall 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.
- E. Mr. Browne and Homelife Glenayre Realty agree to be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,500.00 within sixty (60) days from the date of the Order herein.
- F. Homelife Glenayre Realty Chilliwack Ltd. shall, at their own expense, be audited within the time period directed by Council.
- G. Homelife Glenayre Realty Chilliwack Ltd. shall, within the time period directed by Council, promptly provide to the Council on a monthly basis for a time period of six months, their monthly trust account reconciliations.

- H. Homelife Glenayre Realty consents to fully comply with the trust accounting and financial records requirements in the RESA and the Rules made under the RESA (“Rules”) and provide training and supervision to its accounting staff to ensure compliance.
- I. Mr. Browne and Homelife Glenayre Realty further consent to an Order that if either of them 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*.
- J. As a basis for this Order, Mr. Browne and Mr. Bowne as Managing Broker for Homelife Glenayre Realty acknowledge and agree that the facts set forth herein are correct:
1. Homelife Glenayre Realty was at all relevant times licensed as a brokerage.
 2. Homelife Glenayre Realty’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>
02/16/2015	Present	Homelife Glenayre Realty Chilliwack Ltd. (X026818)	Brokerage	Trading, Rental, Strata
16/02/2013	02/15/2015	Homelife Glenayre Realty Chilliwack Ltd. (X026818)	Brokerage	Trading, Rental, Strata
16/02/2011	15/02/2013	Homelife Glenayre Realty Chilliwack Ltd. (X026818)	Brokerage	Trading, Rental, Strata
16/02/2009	15/02/2011	Homelife Glenayre Realty Chilliwack Ltd. (X026818)	Brokerage	Trading, Rental, Strata
16/02/2007	15/02/2009	Homelife Glenayre Realty Chilliwack Ltd. (X026818)	Brokerage	Trading, Rental, Strata
01/01/2006	15/02/2007	Homelife Glenayre Realty Chilliwack Ltd. (X026818)	Brokerage	Trading, Rental, Strata

16/02/2005	01/01/2006	Homelife Glenayre Realty Chilliwack Ltd. (X026818)	Brokerage	Trading, Rental
16/02/2001	15/02/2003	Homelife Glenayre Realty Chilliwack Ltd. (X026818)	Brokerage	Trading, Rental
16/02/1999	15/02/2001	Homelife Glenayre Realty Chilliwack Ltd. (X026818)	Brokerage	Trading, Rental

3. Mr. Browne was at all relevant times licensed as a managing broker with Homelife Glenayre Realty.
4. 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 Ltd. dba Glenayre Realty Company	Representative	Trading, Rental

(X001289)

06/10/1983	18/10/1983	*** Unlicensed ***		
30/06/1981	05/10/1983	Block Bros. Realty Ltd. (Abba)(Old) (X000325)	Representative	Trading, Rental
08/06/1979	11/02/1980	Fraser City Realty Ltd.	Representative	Trading, Rental

Secondary Licences

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<u>Start Date</u>	<u>End Date</u>	<u>Licensing History</u>	<u>Licence Level</u>	<u>Licence Category</u>
21/05/2010	Present	Homelife Glenayre Realty Chilliwack Ltd. Keith Wilson Road (X027253)	Managing Broker	Trading, Rental, Strata

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<u>Start Date</u>	<u>End Date</u>	<u>Licensing History</u>	<u>Licence Level</u>	<u>Licence Category</u>
13/07/2016	Present	Homelife Glenayre Realty Chilliwack Ltd. Vedder Road (X032694)	Managing Broker	Trading, Rental, Strata

5. On November 25 and 26, 2014 an Office and Records Inspection Report ("ORIR") for Homelife Glenayre Realty was conducted by the Council. It was noted in the ORIC that rental trust reconciliations were not being performed correctly for part of the 2014 fiscal year due to staffing issues at the brokerage and a change in bookkeeping software.
6. It was further reported in the ORIR that, due to the bookkeeping issues, Homelife Glenayre Realty had a shortfall in its pooled rental trust account totaling \$123,680.51. This shortfall was due to the fact that brokerage staff for a time processed security and rental deposits through the debit machine that was linked to the general account rather than the pooled rental trust account.

7. After the bank reconciliations were reconstructed for 2014, Homelife Glenayre Realty made several deposits in the rental pooled trust account in 2015 to correct this short fall in the pooled rental trust account.
8. The ORIR file was closed on September 17, 2015 as Homelife Glenayre Realty had fully replenished the shortfall in the trust account, and had the books and records for their rental property management division up to date.

Previous Discipline History

9. On August 13, 1997 a hearing was conducted and found Mr. Browne to have been negligent within the meaning of section 9.12 of Regulation 75/61 under the former *Real Estate Act* for bookkeeping issues and a failure to properly supervise licensees. Mr. Browne, as nominee for the brokerage, was reprimanded and an audit was ordered of all brokerage trust accounts. Mr. Browne was ordered to complete Chapter 4 in the agent's pre-licensing course and the property management supplemental course and examination by April 30, 1998.
10. On March 23, 2005 Mr. Browne entered into a Consent Order with the Council when he contravened section 9.12 of Regulation 75/61 of the former *Real Estate Act* by not being in active charge in that, as nominee, he failed to ensure that a salesperson under his supervision, complied with Council policy of recommending separate and independent legal advice to buyers regarding the deposit arrangements in a transaction. Mr. Browne's nominee's licence was suspended for seven days and it was ordered that he enroll in the Professional Education Course, Legal Update, and pay enforcement expenses in the amount of \$500.00.
11. On June 20, 2007 Mr. Browne entered into a Consent Order with the Council when he contravened section 3-1 of the Council Rules by failing to have a proper system in place to ensure that strata corporation insurance policies were renewed in a timely fashion. Mr. Browne was reprimanded and ordered to pay enforcement expenses in the amount of \$750.00
12. On October 6, 2014 Mr. Browne and Homelife entered into a Consent Order with the Council when Homelife contravened section 5-11(2)(b) of the Council Rules by failing to properly disclose to a client the amount of the fees it charged to owners when a reminder letter was required to be sent for a nonpayment of strata fees and also the amount of an NSF charge to the owners; and Mr. Browne contravened section 3-1(1)(b) by entering into an arrangement with an afterhours emergency services provider without first obtaining direction from the strata manager or the brokerage and failing 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 charge for NSF cheques paid by the owners. They were each reprimanded, ordered to be jointly and severally liable to pay a discipline penalty of \$1,000.00, and to be jointly and severally liable to pay enforcement expenses of \$1,250.00. Further Mr. Browne was ordered to complete the Broker's Remedial Education Course.

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- K. Proposed Acceptance of Findings and Waiver
1. Based on the Agreed Statement of Facts as outlined herein, and without making any admissions of liability, Allan Charles Browne and Homelife Glenayre Realty are prepared to accept the following findings if made against them by the Council's Consent Order Review Committee:
 - (a) Allan Charles Browne committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening sections 6(2)(b) and (c) of RESA and sections 3-1(1) and (3) of the Rules when he failed to ensure the business of the Brokerage was carried out in accordance with RESA, Regulations, Rules and Bylaws in that, contrary to section 27(2) of RESA, rental and security deposits were deposited to the Brokerage's general account instead of the rental pooled trust account creating a temporary shortfall in the rental pooled trust account.
 - (b) Homelife Glenayre Realty Chilliwack Ltd. committed professional misconduct within the meaning of section 35(1)(a) of RESA when, contrary to section 27(2) of RESA, rental and security deposits were deposited to the Brokerage's general account instead of the rental pooled trust account creating a temporary shortfall in the rental pooled trust account.
 2. Mr. Browne and Homelife Glenayre Realty hereby waive their right to appeal pursuant to section 54 of the *Real Estate Services Act*.
 3. Mr. Browne and Homelife Glenayre Realty 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. Browne and Homelife Glenayre Realty 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. Browne and Homelife Glenayre Realty 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.

“Jessica S. Gossen”
Jessica S. Gossen, Legal Counsel
Real Estate Council of British Columbia

As to Part J only (Agreed Statement of Facts)

Dated 20 day of June, 2017

“Allan Charles Browne”
Allan Charles Browne

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

Dated 19 day of June, 2017

“Allan Charles Browne”
Allan Charles Browne on behalf of Homelife Glenayre Realty Ltd.

As to Parts B, C, E, F, G, H, I, J and K (proposed penalty, Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver)

Dated 19 day of June, 2017