

- c. The date he pays enforcement expenses and all discipline penalties to the BCFSAs as required by this Order.
2. Mr. McLane be prohibited from acting as an unlicensed assistant during his license suspension period.
3. Mr. McLane and AM PREC be jointly and severally liable to pay a discipline penalty to BCFSAs in the amount of \$40,000 within two (2) months from the date of this Order.
4. Mr. McLane and AM PREC be jointly and severally liable to pay a discipline penalty to BCFSAs in the amount of \$24,850 (being the amount of the remuneration accepted by Mr. McLane through AM PREC for the real estate services in respect of which the contraventions occurred, pursuant to section 43(2)(j) of the RESA) within two (2) months of the date of this Order.
5. Mr. McLane, at his own expense, register for and successfully complete the REIC2600 Ethics in Business Practice course, as provided by the Real Estate Institute of Canada, in the time period as directed by BCFSAs.
6. Mr. McLane and AM PREC be jointly and severally liable to pay enforcement expenses to BCFSAs in the amount of \$1,500 within two (2) months from the date of this Order.
7. If Mr. McLane and AM PREC fail to comply with any of the terms of this Order, BCFSAs may suspend or cancel their licenses without further notice to them.

An amount ordered to be paid under section 43 of the RESA is a debt owing to the BCFSAs and may be recovered as such.

Dated this 15th day of September, 2022 at the City of Victoria, British Columbia.

BC FINANCIAL SERVICES AUTHORITY

"JONATHAN VANDALL"

Jonathan Vandall
Delegate of the Superintendent of Real Estate
Province of British Columbia

Attachment – Consent Order Proposal submitted by Mr. McLane on behalf of himself and AM PREC

BC FINANCIAL SERVICES AUTHORITY

**IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*
SBC 2004, c 42 as amended**

AND

IN THE MATTER OF

**ANDREW CHARLES MCLANE
(139600)**

AND

**ANDREW MCLANE PERSONAL REAL ESTATE CORPORATION
(139600PC)**

**CONSENT ORDER PROPOSAL BY ANDREW CHARLES MCLANE
AND ANDREW MCLANE PERSONAL REAL ESTATE CORPORATION**

BACKGROUND AND FACTS

This Consent Order Proposal (the "Proposal") is made by Andrew Charles McLane ("Mr. McLane") on his own behalf and on behalf of Andrew McLane Personal Real Estate Corporation ("AM PREC") to the Superintendent of Real Estate (the "Superintendent") of the BC Financial Services Authority ("BCFSA") pursuant to section 41 of the *Real Estate Services Act* ("RESA").

For the purposes of the Proposal, Mr. McLane on his own behalf and on behalf of AM PREC and the Superintendent have agreed upon the following facts:

1. Mr. McLane (139600) has been licensed as a representative for trading services since 2004.
2. Mr. McLane became licensed as AM PREC in 2009.
3. Mr. McLane was at all relevant times licensed as a representative with [Brokerage 1] (the "Brokerage"). Mr. McLane was unlicensed between January and March 2019, when he became licensed through a different brokerage, with conditions of enhanced supervision on his license.
4. This matter arises from an investigation following the Brokerage's January 2019 surrender of Mr. McLane's license, including an investigation of Mr. McLane's personal interest in a trade in a property located in Coombs, British Columbia (the "Property") in or about October 2018.
5. On October 2, 2018, each of [Seller 1] ("[Seller 1]"), [Seller 2], and [Seller 3], together the owners of the Property (collectively, the "Sellers"), entered into a multiple listing agreement for

the Property with AM PREC as the designated agent for the Sellers. The Property was listed on the Multiple Listing Service (“MLS”).

6. [Seller 1] is a British Columbia company of which Mr. McLane is the sole director and officer, and [Seller 1] is an “associate” of Mr. McLane pursuant to the Real Estate Rules made under the RESA (the “Rules”).
7. A couple of senior citizens (one person in their 70s, another person in their 80s) (the “Buyers”) saw the Property on the MLS and contacted Mr. McLane on or about October 14, 2018. Mr. McLane did not disclose to the Buyers on their first discussion by phone that he was, through [Seller 1], one of the Sellers of the Property.
8. The Buyers viewed the Property with Mr. McLane twice prior to signing the Contract of Purchase and Sale on October 22, 2018. The Buyers made additional visits to the Property without Mr. McLane and then expressed an interest in purchasing the Property to Mr. McLane after he agreed to drop the price of the Property.
9. The Buyers verbally discussed terms of an offer to purchase the Property with Mr. McLane prior to signing the Contract of Purchase and Sale on October 22, 2018.
10. The Buyers reasonably interpreted Mr. McLane’s dealings with them prior to presenting and signing the Contract of Purchase and Sale of October 22, 2018, as implied agency and relied on Mr. McLane when entering the Contract of Purchase and Sale of October 22, 2018.
11. Mr. McLane attended a sales meeting with other licensees at his related Brokerage, on or about October 17, 2018, and discussed the Buyers possible purchase of the Property. Mr. McLane discussed with his managing broker his concern that he was in a potential conflict of interest with the Buyers as the listing agent for the Property and as one of the Sellers of the Property. The managing broker of the Brokerage recommended to Mr. McLane that he should avoid dealing with the Buyers as unrepresented parties in the circumstances and that the Buyers should have an agent acting solely on their behalf.
12. Mr. McLane asserts that he verbally disclosed to the Buyers that he was a part owner of the Property during the Buyers’ initial viewing of the Property, and that he raised the issue of agency representation with the Buyers at that time. Mr. McLane states that the Buyers informed him that they were not working with a real estate agent and that they were prepared to represent themselves. Mr. McLane states that he explained that he could not act for the Buyers given his interest in the Property and recommended that they obtain independent representation.
13. The Buyers deny receiving any disclosure of Mr. McLane’s interest in the Property either verbally or in writing and they deny any explanation of Mr. McLane’s interest in the Property when they were presented the *Disclosure of Interest in Trade Form* on October 22, 2018.
14. At no time did Mr. McLane provide the Buyers with a *Disclosure of Risks Associated with Dual Agency Form* or *Disclosure of Risks to Unrepresented Parties Form*.
15. On or about October 22, 2018, Mr. McLane provided the following written disclosure documents dated October 19, 2018, to the Buyers pursuant to the Rules:

- a. a *Disclosure of Interest in Trade Form* required by section 5-9 [Disclosure of interest in trade] of the Rules as Mr. McLane was an owner/ seller of the Property;
 - b. a *Disclosure of Representation in Trading Services Form* (“DORT”) required by section 5-10 [Disclosure of representation in trading services] of the Rules which purported to show that a licensee other than Mr. McLane (the “Second Licensee”) was offering agency to the Buyers; and
 - c. a *Disclosure of Remuneration Form* required by section 5-11 [Disclosure of remuneration] of the Rules which set out a commission of “7% on the first \$100,000 and 3% on the balance of the purchase price” payable to the Brokerage on a purchase transaction for the Property.
16. The Disclosure of Interest in Trade Form was not provided promptly, as required by the Rules, in that it was not provided before the Buyers viewed or discussed their interest in the Property. Also, the Buyers had verbally discussed the terms of an agreement to acquire the Property with Mr. McLane. Further, the form did not include information about Mr. McLane’s relationship to the seller/ owner, [Seller 1], his associate but only set out that an associate would receive \$1,000. The \$1,000 was not intended to be paid to [Seller 1] or another associate, but to the Second Licensee.
17. The DORT Form provided by Mr. McLane was misleading in that the Buyers had not engaged or even met with the Second Licensee to represent them in a purchase transaction for the Property as of October 19. Although the form prepared by Mr. McLane indicated that the Buyers were informed by the Second Licensee of the risks to unrepresented persons in a real estate transaction as required by section 5-10.1 [Disclosure of risks to unrepresented parties] of the Rules, this is false as the Second Licensee had not met or spoken to the Buyers as of the date of that form: October 19.
18. It appears Mr. McLane attempted to resolve the conflict of interest by referencing the Second Licensee on the DORT form. However, the inclusion of the Second Licensee was ineffectual in resolving this conflict as Mr. McLane provided little to no meaningful opportunity for the Buyers to meet with or contact the Second Licensee at all material times.
19. The Disclosure of Remuneration Form included the commission payable to the Brokerage and did not provide any breakdown between the amounts Mr. McLane or the Second Licensee would receive, as set out in section 5-11(3) [Disclosure of Remuneration] of the Rules and despite the language in the form setting out that the commission was “in relation to real estate services provided to you or on your behalf...”
20. On October 22, 2018, the Buyers met with Mr. McLane to review and execute a subject- free offer for the Property contained in a Contract of Purchase and Sale of the same date, which Mr. McLane accepted on behalf of the Sellers (the “Contract”).
21. Relevant portions of the Contract included:
 - a. a purchase price of \$730,000 (below the listing price of \$770,000);

- b. a deposit of \$35,000 (the “Deposit”);
 - c. a completion date of February 1, 2019;
 - d. an acknowledgment that each of the Sellers and the Buyers were advised to seek legal advice on the Contract; and
 - e. no “subject” clause(s) respecting either financing being made available to the Buyers, or the Buyers successfully selling their existing home/ property in Parksville, British Columbia.
22. The Contract, as drafted by Mr. McLane and purportedly reviewed by the Second Licensee, made the Buyers vulnerable to Mr. McLane and to the Sellers. The Buyers could not afford to complete the sale in the Contract without selling their existing home (the “Existing Property”), which Mr. McLane says he did not know until December 2018. The Buyers were on a fixed retirement income and could not readily obtain bridge financing or go back to work should they be unable to sell their Existing Property in a timely way. The Buyers were at risk of losing their Deposit, and could not afford to do so, if unable to complete the transaction in the Contract.
23. After introducing the Buyers to the Second Licensee at the Brokerage office on October 22, Mr. McLane met with the Buyers alone, without the Second Licensee present, to obtain their signatures on the Contract. Mr. McLane did not provide the Second Licensee with the opportunity to discuss the Contract with the Buyers, although he had shared a copy of the Contract, which he prepared, with the Second Licensee briefly that morning before the meeting with the Buyers.
24. In December 2018, one of the Buyers met in person with Mr. McLane (the “December 2018 Meeting”) to explain they had been unable to sell their Existing Property; they had difficulties obtaining financing; and they requested an extension of time for the completion date in the Contract. Mr. McLane declined to extend the completion date on behalf of the Sellers.
25. The Buyers and the Second Licensee did not have contact information for each other. Mr. McLane did not inform the Second Licensee about the December 2018 Meeting nor of the of the Buyers’ requests and did not invite the Second Licensee to the December 2018 Meeting with the Buyers. Mr. McLane sent the Buyers an email directly in January 2019 enclosing a document for signature.
26. Mr. McLane failed to exercise reasonable care and skill when he failed to provide the DORT form per section 5-10 of the Rules when dealing with the Buyers while they were unaccompanied by a real estate professional prior to October 22, 2018, or at any point thereafter.
27. In January 2019, the Brokerage could not reach the Buyers through the Second Licensee to obtain required transaction documents. Despite Mr. McLane being suspended from providing real estate services from January 2 to 8, 2019 with notice, he had not provided the Buyers’ contact information to the Second Licensee.
28. In or about January 2019, the Buyers engaged a new and independent licensee outside of the Brokerage to represent them in the sale of their Existing Property. This new licensee reported Mr. McLane’s conduct in respect of the Buyers to the managing broker(s) of the Brokerage.

29. The Brokerage then surrendered Mr. McLane's license to the BCFSA in January 2019.
30. After Mr. McLane's license was surrendered, on January 17, 2019, the Buyers and the Sellers agreed to an Addendum to the Contract that extended the time for the Buyers to complete their purchase of the Property, in consideration of an increased deposit.
31. The Buyers were ultimately able to sell their Existing Property and to complete their transaction for the Property in or about June 2019. Mr. McLane and the other Sellers had about four (4) months additional carrying costs for the Property.
32. Between March 2019 and present, Mr. McLane's license was subject to conditions of enhanced supervision by his managing broker. The conditions were imposed by BCFSA under section 15 of the RESA, with the consent of Mr. McLane, while BCFSA investigated this matter.
33. A Notice of Discipline Hearing was issued on June 2, 2022, and it was served on Mr. McLane on his own behalf and on behalf of AM PREC.
34. Mr. McLane and AM PREC have a prior discipline history with BCFSA as reported in a Consent Order dated November 2018, at McLane (Re), 2018 CanLII 125132 (BC REC) for misleading advertising for which they were suspended from January 2 to 8, 2019.

PROPOSED FINDINGS OF MISCONDUCT

For the sole purposes of the Proposal and based on the Facts outlined herein, Mr. McLane and AM PREC propose the following findings of misconduct be made by the Superintendent:

1. Mr. McLane and AM PREC committed professional misconduct within the meaning of sections 35(1)(a)(c) and/or (d) [Misconduct by licensee] of the RESA, in or about October 2018 while acting as the designated agent for the Sellers of the Property and Mr. McLane having a personal ownership interest in the Property through his associate, [Seller 1], in that they:
 - a) Involved the Second Licensee in a purchase and sale of the Property (the "Sale") to the Buyers whereby the Second Licensee was to represent the Buyers' interests and offer agency to the Buyers in the Sale, but failed either deliberately and/or in preference of their own interests and/or due to incompetence to:
 - i. disclose Mr. McLane's interest in the Property, through an associate [Seller 1], in a timely and accurate way as required by section 5-9 (including 5-9(3)(4) and (5)(d)) [Disclosure of interest in trade] of the Rules,
 - ii. provide any meaningful opportunity for the Buyers to seek or obtain advice and representation from the Second Licensee in the Sale and/or ensure the Buyers understood the risks to proceeding with the Sale as unrepresented persons as required by section 5-10.1 [Disclosure of risks to unrepresented parties] of the Rules, which made the Buyers financially vulnerable in the Sale, and
 - iii. accurately complete written disclosures of representation and remuneration, as required by sections 5-10 [Disclosure of representation in trading services] and 5-11 (including 5-11(3)) [Disclosure of remuneration] of the Rules,

thereby failing to effectively give notice to the Buyers and others that Mr. McLane and AM PREC and/or the Second Licensee were not acting in the interests of the Buyers, and all contrary to section 5-16 [Restriction on dual agency in trading services], and/or section 3-4 [Duty to act honestly and with reasonable care and skill] of the Rules.

PROPOSED ORDERS

Based on the Facts herein and the Proposed Findings of Misconduct, Mr. McLane and AM PREC propose that the Notice of Discipline Hearing in this matter be resolved through the following Orders being made by the Superintendent, pursuant to section 43 of the RESA:

1. Mr. McLane and AM PREC's licenses be suspended for the later of:
 8. Two (2) months;
 9. The date he successfully completes the REIC2600 Ethics in Business Practice course, as provided by the Real Estate Institute of Canada as required by the signed Consent Order; or
 10. The date he pays enforcement expenses and all discipline penalties to the BCFSAs as required by the signed Consent Order.
2. Mr. McLane be prohibited from acting as an unlicensed assistant during his license suspension period.
3. Mr. McLane and AM PREC be jointly and severally liable to pay a discipline penalty to BCFSAs in the amount of \$40,000 within two (2) months from the date of the signed Consent Order.
4. Mr. McLane and AM PREC be jointly and severally liable to pay a discipline penalty to BCFSAs in the amount of \$24,850 (being the amount of the remuneration accepted by Mr. McLane through AM PREC for the real estate services in respect of which the contraventions occurred, pursuant to section 43(2)(j) of the RESA) within two (2) months of the date of the signed Consent Order.
5. Mr. McLane, at his own expense, register for and successfully complete the REIC2600 Ethics in Business Practice course, as provided by the Real Estate Institute of Canada, in the time period as directed by BCFSAs.
6. Mr. McLane and AM PREC be jointly and severally liable to pay enforcement expenses to BCFSAs in the amount of \$1,500 within two (2) months from the date of the signed Consent Order.
7. If Mr. McLane and AM PREC fail to comply with any of the terms of the signed Consent Order, BCFSAs may suspend or cancel their licenses without further notice to them.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

1. Mr. McLane and AM PREC acknowledge and understand that the Superintendent may accept or reject the Proposal. If the Proposal is rejected by the Superintendent, the matter may be referred to a disciplinary hearing.
2. Mr. McLane and AM PREC acknowledge that they have been urged and given the opportunity to seek and obtain independent legal advice with respect to the disciplinary process, the allegations contained in the Notice of Discipline Hearing, and the execution and submission of the Proposal to the Superintendent; and, that they have obtained independent legal advice or have chosen not to do so, and that they are making the Proposal with full knowledge of the contents and the consequences if the Proposal is accepted.
3. Mr. McLane and AM PREC acknowledge and are aware that BCFSa will publish the Proposal and the Consent Order or summaries thereof on BCFSa's website, on CanLII, a website for legal research and in such other places and by such other means as BCFSa in its sole discretion deems appropriate.
4. Mr. McLane and AM PREC hereby waive their right to appeal pursuant to section 54 of the RESA.
5. If the Proposal is accepted and/or relied upon by the Superintendent, Mr. McLane and AM PREC will not make any public statement(s) inconsistent with the Proposal and its contents. Nothing in this section is intended to restrict Mr. McLane or AM PREC from making full answer and defence to any civil or criminal proceeding(s).
6. The Proposal and its contents are made by Mr. McLane and AM PREC for the sole purpose of resolving the Notice of Discipline Hearing in this matter and do not constitute an admission of civil liability. Pursuant to section 41(5) of the RESA, the Proposal and its contents may not be used without the consent of Mr. McLane and AM PREC in any civil proceeding with respect to the matter.

"ANDREW MCLANE"

**ANDREW CHARLES MCLANE on his own behalf
and on behalf of ANDREW MCLANE PERSONAL
REAL ESTATE CORPORATION**

Dated 31st day of August, 2022