

IN THE MATTER OF THE *Real Estate Act*, R.S.A. 2000, c. R- 5

AND IN THE MATTER OF Jon Right, a Real Estate Associate, formerly registered with  
MaxWell South Star Realty

INTRODUCTION

1. The Executive Director of the Real Estate Council of Alberta conducted an investigation into whether the conduct of Jon Right (“Mr. Right”), Real Estate Associate, formerly registered with MaxWell South Star Realty (“MaxWell”), is deserving of sanction and/or whether he breached the requirements of the *Real Estate Act* (“the Act”) or the former Rules prescribed pursuant thereto (“the former Rules”) or the former *Code of Conduct* prescribed pursuant thereto (“the former *Code of Conduct*”).
2. The Executive Director and Mr. Right agree to resolve all matters against Mr. Right on the terms and conditions set out herein.

AGREED STATEMENT OF FACTS

1. At the time of the transaction Mr. Right was registered as a real estate associate with MaxWell.
2. Mr. Right acted for D.C. and her significant other, D.P. in their efforts to purchase a property in Calgary, Alberta. D.P.’s friend, V.H. introduced D.C. and D.P. to Mr. Right.
3. Mr. Right, D.C. and D.P. entered into an Agency Agreement. Despite this, no Agency Agreement was provided with the brokerage files.
4. On July 5, 2006, Mr. Right created a purchase contract listing D.C. and D.P. as the purchasers of 115 Shawfield Bay SW (“115 Shawfield Bay”), Calgary, Alberta for a purchase price of \$305,000.00, a closing date of July 14, 2006, and a financing condition date of July 10, 2006. D.C. executed the purchase contract.
5. D.C. and D.P. never completed the purchase of 115 Shawfield Bay, as there was a competing and better offer. After the offer to purchase fell through, D.C. consulted with M.M. a mortgage associate with WestHills Mortgage Centre in or about July 2006 in an effort to secure financing for the purchase of a home. Mr. Right introduced D.C. to M.M..
6. On July 6, 2006, Mr. Right took D.C. and D.P. to view the home located at 20 Whitaker Close NE, Calgary, Alberta (“the Whitaker Property”).
7. On July 7, 2006, at the request of, or in collaboration with Mr. Right, M.M. drafted a letter indicating that D.P., D.C. and V.P. had secured unconditional first mortgage

financing in the amount of \$300,000.00 to complete the purchase of the Whitaker Property on September 1, 2006, despite there being no financing in place. Mr. Right presented this letter to the sellers.

8. Mr. Right subsequently prepared a purchase contract for the Whitaker Property, and over time this document was amended and/or modified a number of times. The initial purchase contract listed D.C. and D.P. as buyers, whereas Mr. Right made subsequent amendments to the purchase contract, listing co-purchasers V.P., and later M.C. Mr. Right suggested the addition of V.P. and M.C. because D.C. and D.P. were having difficulties obtaining financing.
9. On July 7, 2006, the sellers signed the acceptance of the offer, and D.C. and D.P. provided a \$5,000.00 deposit.
10. Multiple versions of purchase contracts existed relating to the purchase of the Whitaker Property, not all copies of which were turned into Mr. Right's brokerage. Errors relating to these purchase offers included:
  - (a) improper signatures or signatories;
  - (b) lack of clarity as to whether parties had provided their consent to the addition of co-buyers to the purchase contracts, and errors or lack of clarity as to the relationship between the parties; and
  - (c) lack of clarity as to when signatures, conditions and clauses were inserted into the purchase contracts.
11. On August 28, 2006, D.C. and D.P. moved into the Whitaker Property. The evidence is unclear as to who provided D.C. with keys to the property.
12. On August 29, 2006, Mr. Right advised D.C. and D.P. that the lenders had declined to provide financing for the purchase of the Whitaker Property.
13. On August 30, 2006, M.M. created a mortgage application listing M.C. as the sole applicant.
14. D.C. and D.P. were unlawfully residing in the Whitaker Property at this time and Mr. Right was aware of this.
15. During the period of July 7, 2006 to September 22, 2006, various attempts were made by M.M. in collaboration with Mr. Right to obtain financing for the purchase of the Whitaker Property. Mr. Right had significant involvement in the financing aspect of the Whitaker Property transaction. He suggested the addition of co-signers and co-mortgage applicants. At no time during this period were the sellers or their agent advised that financing was not in place.

16. On September 22, 2006, the sellers of the Whitaker Property were notified that financing was not in place. The sellers contacted the police, and shortly thereafter, D.C. and D.P. left the Whitaker Property.
17. On September 22, 2006, Mr. Right prepared a purchase contract for the Whitaker Property, listing himself and his wife as purchasers. This purchase contract was not provided to the brokerage, and Mr. Right did not advise his brokerage about the purchase.
18. On September 26, 2006, the sellers of the Whitaker Property accepted the purchase offer of Mr. and Mrs. Right.
19. On or about September 29, 2006, Mr. Right prepared a release stating that Mr. and Mrs. Right were forever discharged from any causes of action in consideration of the purchase of the Whitaker Property. Mr. Right paid \$2,000.00 to the sellers, to cover property damages caused by D.C. and D.P. to the Whitaker Property.

### CONCLUSION

By reason of the matters described herein, Mr. Right's conduct is deserving of sanction in that he committed the following breaches:

- (a) Multiple breaches of *Real Estate Act* (1999) Rules 23(e), and 23(f), failing to provide all documentation or trade records required under the Rules to the broker, and failing to keep the broker informed of the activities being performed by the associate broker or agent on behalf of the brokerage.
- (b) Breach of *Code of Conduct* (1999) section 4(a), knowingly or recklessly making a representation in the course of marketing the property that was untrue; to wit, when he represented to the sellers and/or their representatives that financing was in place when he knew or ought to have known this was untrue and when he failed to correct the representation despite becoming aware that financing was not in place.
- (c) Breach of *Code of Conduct* (1999) sections 6(a) and 6(c), failing to render competent service, and participating in the creation of contracts or documents that he knew were not legally binding, were confusing, or that did not reflect the agreements already in place when he created multiple versions of the purchase agreement, resulting in confusion as to when signatures, conditions and clauses were inserted, and as to the various parties' consent to same.

### SETTLEMENT TERMS

1. In settlement of these issues, Mr. Right will immediately pay to the Real Estate Council of Alberta a fine in the amount of \$8,000, together with costs in the amount of \$1,500.
2. Mr. Right's authorization to trade in real estate as an agent will be suspended for a period of four (4) months from the date of ratification of this Agreement by the Hearing Panel.

3. Mr. Right agrees that as a condition of his authorization to trade in real estate, he will, within six (6) months of ratification of this Agreement by the Hearing Panel, successfully complete Unit 9 of the Mortgage Associate’s Program – Ethics, Professional Conduct and Risk Reduction or similar courses at the sole discretion of the Executive Director.
4. Mr. Right acknowledges that he has been given an opportunity to seek the advice of legal counsel and acknowledges that he is agreeing to the terms of settlement of his own free will.
5. Mr. Right is aware that a copy of the Consent Agreement will be placed on his file and may be reviewed and considered in any future disciplinary proceedings.
6. Mr. Right is aware the Real Estate Council of Alberta may publish the contents of this Consent Agreement.
7. Mr. Right hereby waives any rights he may have under the Act or otherwise to a review, hearing, appeal or other judicial proceeding involving the matter referred to herein.
8. These settlement terms are intended to resolve all matters described herein and, subject to the approval of the Hearing Panel, the Executive Director will take no further action under the Act or before the courts in this regard.

IN WITNESS WHEREOF the undersigned agree and accept the terms and conditions of this settlement this 10 day of May, 2011.

Signed and delivered )  
 in the presence of: )  
 )  
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 C.S. )  
 Witness to the signature )  
 of Jon Right )

*JON RIGHT*



