

THE REAL ESTATE BROKERS ACT)
)
Section 11(1); 34(1))

Order No. 2600
November 5, 2008

LORIN McLACHLAN

WHEREAS:

(A) On May 18, 2007, The Manitoba Securities Commission (the "Commission") issued a Notice of Hearing (the "Notice") giving notice of its intention to hold a hearing (the "Hearing") to consider, among other things, whether it was in the public interest to suspend or cancel the registration of Lorin McLachlan ("McLachlan") as a salesperson under *The Real Estate Brokers Act* (the "Act");

(B) McLachlan and Staff of the Commission ("Staff") entered into a Settlement Agreement (the "Settlement Agreement"), a copy of which is attached as Schedule "A" dated November 3, 2008, in which Staff and McLachlan agreed to a proposed settlement in the proceedings initiated by the Notice, subject to the approval of the Commission;

(C) McLachlan has consented to the issuance of this Order and has waived her right to a full hearing;

(D) The Commission has reviewed the Settlement Agreement and is of the opinion that it is in the public interest to make this Order.

IT IS ORDERED:

1. **THAT** the Settlement Agreement be and the same is hereby approved.
2. **THAT** McLachlan will make a payment to the Treasury of the Province of Manitoba in the amount of eight thousand (\$8,000.00) Dollars forthwith.
3. **THAT** McLachlan enroll in and successfully complete the following components of Phase 2 of the *Real Estate as a Professional Career* course: "Phase 2: Unit 2: Statutory Law (*Real Estate Brokers Act*) within six months from November 3, 2008.

4. **THAT** McLachlan enroll and successfully complete the following component of Phase 3 of the *Real Estate as a Professional Career* course: "Phase 3: Unit 5: Offers to Purchase, within six months from November 3, 2008.

BY ORDER OF THE COMMISSION

Director - Legal



THE MANITOBA
SECURITIES
COMMISSION

SCHEDULE "A"

SETTLEMENT AGREEMENT

BETWEEN:

LORIN McLACHLAN

and

STAFF OF THE MANITOBA SECURITIES COMMISSION

The Manitoba Securities Commission
500 – 400 St. Mary Avenue
Winnipeg, MB R3C 4K5

**In the Matter of The Real Estate Brokers Act
R.S.M. 1987, c. R20**

and

In the Matter of Lorin McLachlan

Settlement Agreement

1. Staff of The Manitoba Securities Commission and Lorin McLachlan ("McLachlan") have reached the following agreement:

Introduction

- 2.1 On May 18, 2007, The Manitoba Securities Commission (the "Commission") issued a notice of hearing (the "Notice of Hearing") together with a Statement of Allegations of staff for a hearing (the "Hearing") under subsection 11(1) of *The Real Estate Brokers Act* (the "Act") to consider, *inter alia*:
 - a) whether it is in the public interest to order pursuant to subsection 11(1) of the Act that the registration of McLachlan as a salesperson under the Act be suspended or cancelled;
 - b) whether it is in the public interest that McLachlan be ordered to pay the costs of the investigation and hearing;
 - c) such further and other matters as counsel may advise and the Commission may permit.
- 2.2 Discussions have been held between McLachlan and Staff of The Manitoba Securities Commission ("Staff") to settle the matters covered in the Notice of Hearing and Statement of Allegations (the "Proceedings"). A settlement (the "Settlement") has been reached based on the terms and conditions set forth herein.
- 2.3 Pursuant to the Settlement, Staff agrees to recommend to the Commission that the Proceedings initiated against McLachlan be resolved and disposed of under the terms and conditions of this Agreement. McLachlan consents to the Settlement and to the consent order referred to in section 6 below.

Agreed Statement of Facts

3. McLachlan acknowledges the following facts as correct.

KEN GUTTORMSON and KATHARINE KOSTIUK

- 3.1 On or about March 24, 2004 McLachlan entered into an Offer to Purchase to purchase property located at 5-3862 Ness Avenue (the "Ness Property") owned by 4724438 Manitoba Ltd. ("4724438") with a possession date of May 1, 2004.
- 3.2 On or about April 26, 2004, Ken Guttormson and Katharine Kostiuk entered into an Offer to Purchase to purchase the Ness Property from McLachlan for the sum of \$84,900 with a possession date of May 28, 2004. McLachlan prepared the Offer to Purchase which was signed by Ken Guttormson and Katharine Kostiuk.
- 3.3 McLachlan also agreed to provide Ken Guttormson and Katharine Kostiuk with a loan in connection with their purchase of the Ness Property to be repaid with the cash-back they would receive on their mortgage. This was not disclosed in the Offer to Purchase.
- 3.4 McLachlan took possession of the Ness Property on May 1, 2004.
- 3.5 Ken Guttormson and Katharine Kostiuk did not complete the purchase of the Ness Property by the possession date of May 28, 2004.
- 3.6 On or about June 5, 2004 Ken Guttormson and Katharine Kostiuk became interested in purchasing the Ness Property again. McLachlan agreed to sell them the Ness Property with a possession date of June 22, 2004. All other terms of the new Offer to Purchase were the same as the previous Offer to Purchase, including the loan.
- 3.7 The new Offer to Purchase was not in writing.
- 3.8 Ken Guttormson and Katharine Kostiuk did not complete the purchase of the Ness Property.

CINDY ALLARD

- 3.9 On or about October 15, 2005, Cindy Allard was referred to McLachlan by a colleague to assist Cindy Allard in purchasing a home.
- 3.10 On or about January 12, 2006, Cindy Allard executed an Offer to Purchase prepared by McLachlan to purchase property located at 312 Ainslie Street (the "Ainslie Property"). This Offer to Purchase was conditional upon Cindy Allard obtaining mortgage financing (the "mortgage financing condition") and the purchase price was left blank.
- 3.11 Prior to Cindy Allard signing the Offer to Purchase she indicated to McLachlan she was willing to pay \$155,000 for the Ainslie Property. Cindy Allard also

indicated that \$158,000 was the highest price that she was willing to pay for a home. McLachlan advised Cindy Allard to leave the purchase price section of the Offer to Purchase blank.

- 3.12 Prior to signing the Offer to Purchase for the Ainslie Property, Cindy Allard told McLachlan that she would be leaving Winnipeg on January 13, 2006 to go to Mexico and not returning until January 16, 2006. Cindy Allard left McLachlan instructions on how to reach her by telephone.
- 3.13 Prior to submitting the Offer to Purchase to the listing salesperson, McLachlan removed the financing condition.
- 3.14 On January 14, 2006, McLachlan submitted the Offer to Purchase the Ainslie Property signed by Cindy Allard to the listing broker. McLachlan instructed the listing salesperson to insert a purchase price of \$158,000 into the Offer to Purchase.
- 3.15 Cindy Allard was advised by McLachlan on January 16, 2006 by phone that the submitted offer for the Ainslie Property was accepted.
- 3.16 The purchase of the Ainslie Property was not completed due to the Vendor being unable to convey title on of the date of possession.

Acknowledgments

4. McLachlan acknowledges that:
 - 4.1 In connection with the sale of the Ness Property to Ken Guttormson and Katharine Kostiuik, McLachlan entered into a verbal agreement and failed to prepare a new Offer to Purchase contrary to sections 21(1) and 22(1) of the Act.
 - 4.2 In connection with the sale of the Ness Property to Ken Guttormson and Katharine Kostiuik, McLachlan promised to loan Ken Guttormson and Katharine Kostiuik money in relation to the purchase of the Ness Property and failed to make disclosure of the loan contrary to section 22(1)(f)(iv) of the Act.
 - 4.3 In connection with the Ainslie Property transaction, McLachlan had Cindy Allard execute an offer to purchase which did not show the price offered by the Offeror, contrary to section 22(1)(d) of the Act.
 - 4.4 In connection with the Ainslie Property transaction, McLachlan changed a term and condition on the Offer to Purchase after it was executed by Cindy Allard.

Undertaking

- 5 McLachlan undertakes and agrees to the following:
 - 5.1 McLachlan will forthwith make a one-time payment to the Treasury of the Province of Manitoba in the amount of eight thousand (\$8,000.00) Dollars.

- 5.2 to enroll in and successfully complete the following components of Phase 2 of the *Real Estate as a Professional Career* course: "Phase 2: Unit 2: Statutory Law (*Real Estate Brokers Act*) within six months from the date of this Agreement; and
- 5.3 to enroll and successfully complete the following component of Phase 3 of the *Real Estate as a Professional Career* course: "Phase 3: Unit 5: Offers to Purchase, within six months from the date of this Agreement.

Order

- 6 McLachlan consents to an order by the Commission (the "Order") that:
 - 6.1 the Agreement be approved.
 - 6.2 the approval of this Agreement and the making of the Consent Order as set out in this Settlement Agreement shall be sought at a public hearing, in camera.


Waiver and Procedure for Approval of Settlement

7. Staff and McLachlan agree that, if the Commission approves this Agreement, it will constitute the entirety of the evidence to be submitted to the Commission in connection with the Proceedings, and that McLachlan hereby waives her right to a full hearing and appeal of this matter.
 - 7.1 If for any reason whatsoever the Commission does not approve this Agreement or the Consent Order referred to above is not made by the Commission, Staff will be entitled to proceed with the Hearing commenced by the Notice of Hearing unaffected by this Agreement or the settlement discussions. If this Agreement is not approved or the Commission does not make the Consent Order set out above, either Staff or McLachlan will not raise in the Proceedings or in any other proceeding the terms of the Agreement.
 - 7.2 Staff and McLachlan agree that if the Commission approves this Agreement and the Consent Order is made upon the terms set out in this Agreement, this Agreement will be a public document.
 - 7.3 McLachlan agrees that she will not raise in any proceedings this Agreement or the negotiation or process of approval of this Agreement as a basis for an attack on the Commission's jurisdiction, alleged bias, alleged unfairness, or any other challenges that may be available.

7.4 McLachlan further agrees that if the Commission approves this Agreement and the Consent Order is made upon the terms set out in this Agreement, McLachlan will not make any statements inconsistent with the terms of this Agreement.

DATED at Winnipeg, Manitoba, this 29 day of September, 2008.

Witness 


Lorin McLachlan

DATED at Winnipeg, Manitoba, this 3 day of NOVEMBER, 2008.

Staff of The Manitoba Securities Commission

per. 
Director, Legal and Enforcement