

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

AND

IN THE MATTER OF  
JOHN ALEXANDER BRUCE  
000917

CONSENT ORDER

RESPONDENT: John Alexander Bruce, Managing Broker,  
D.F.H. Real Estate Ltd.

DATE OF REVIEW MEETING: October 10, 2018

DATE OF CONSENT ORDER: October 10, 2018

CONSENT ORDER REVIEW COMMITTEE:  
L. Hrycan  
E. Mignosa  
S. Sidhu  
R. Wong

ALSO PRESENT:  
E. Seeley, Executive Officer  
D. Avren, Director, Legal Services  
Kristine Mactaggart Wright, Legal  
Counsel for the Real Estate Council

PROCEEDINGS:

On October 10, 2018, the Consent Order Review Committee (“Committee”) resolved to accept the Consent Order Proposal (“COP”) submitted by John Alexander Bruce.

**WHEREAS** the COP, a copy of which is attached hereto, has been executed by John Alexander Bruce.

**NOW THEREFORE**, the Committee having made the findings proposed in the attached COP, and in particular having found that John Alexander Bruce committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*, orders that:

1. John Alexander Bruce be reprimanded;

2. John Alexander Bruce pay a discipline penalty to the Council in the amount of \$2,500 within ninety (90) days from the date of this Order;
3. John Alexander Bruce, at his own expense, register for and successfully complete the course *Homeowner Protection Act: Protect Your Sellers and Yourself* offered by the Victoria Real Estate Board, in the time period as directed by the Council; and
4. John Alexander Bruce pay enforcement expenses to the Council in the amount of \$1,500 within sixty (60) days from the date of this Consent Order.

If John Alexander Bruce 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 10th day of October, 2018, at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

"L. Hrycan"

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Len Hrycan  
Consent Order Review Committee

Atch.

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

**AND**

**IN THE MATTER OF**

**JOHN ALEXANDER BRUCE (000917)**

**CONSENT ORDER PROPOSAL BY JOHN ALEXANDER BRUCE**

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**BACKGROUND AND FACTS**

This Consent Order Proposal (the "Proposal") is made by John Alexander Bruce to the Consent Order Review Committee ("CORC") of the Real Estate Council of British Columbia (the "Council") pursuant to section 41 of the *Real Estate Service Act* ("RESA").

For the purposes of the Proposal, Mr. Bruce and the Council have agreed upon the following facts:

1. Mr. Bruce has been licensed with the Council since 1971. He was licensed in the category of Managing Broker since 1981, for trading and rental property management services, except for June 1997 until June 2001, and from June 2017, when he was licensed as an Associate Broker for trading and rental property management services.
2. Mr. Bruce was at all relevant times licensed as a Managing Broker with D.F.H. Real Estate Ltd.
3. On January 20, 2015, the residential property located at 16XX Eagle Way, North Saanich, BC (the "Property") was listed for sale by Mr. Bruce acting as the designated agent.
4. According to the New Homes Registry on the BC Housing website, the Property is an "owner-built" home, with a first occupancy date of July 21, 2011.
5. Pursuant to the *Homeowner Protection Act*, SBC 1998, c 31 ("HPA"), within the first ten (10) years after initial occupancy, the owner-builder or any subsequent owner is required to provide a disclosure notice known as an Owner Builder Disclosure Notice ("OBDN") to any prospective purchasers. The OBDN must be provided prior to entering into a purchase and sale agreement. The OBDN informs prospective purchasers: (1) that the home was built under an "Owner-Builder Authorization"; (2) the date that the 10 year period started; and (3) whether there is a voluntary policy of home warranty insurance in place.

6. As the Property was listed for sale within the 10 year period, the seller was required to provide an OBDN to a prospective purchaser prior to entering into a contract of purchase and sale.
7. Mr. Bruce's seller client completed a Property Disclosure Statement ("PDS") for the Property, dated January 20, 2015. The seller answered "yes" to question 3S (Were these Premises constructed by an "owner builder", as defined in the *Homeowner Protection Act*, with construction commencing, or a building permit applied for, after July 1, 1999? (If so, attach required Owner Builder Declaration and Disclosure Notice)). There was no OBDN attached to the PDS.
8. The seller answered "no" to question 3T in the PDS (Are these Premises covered by home warranty insurance under the *Homeowner Protection Act*?).
9. As the Property was listed within the 10 year period, the seller was required to provide an OBDN to a prospective purchaser before entering into a contract of purchase and sale.
10. On January 27, 2015, an offer to purchase the Property by way of a contract of purchase and sale for the Property was prepared with Mr. and Mrs. D as the buyers (the "Buyers"). After a counteroffer, the accepted contract of purchase and sale for the Property from the Buyers had a price of \$885,000, required a deposit of \$50,000 on February 16, 2015 (the "Deposit") paid into trust, and a completion date of May 4, 2015 (the "Contract").
11. Although the Contract contained subject clauses, all of the subjects were removed without the Buyers having received an OBDN.
12. On May 4, 2015, the purchase of the Property completed and title changed.
13. In October 2015, the Buyers contacted their own agent about concerns with the Property and its status as an "owner-built" home. The Buyers' agent contacted Mr. Bruce, who in turn contacted the seller of the Property.
14. By January 2016, the Buyers obtained a copy of the OBDN for the Property.
15. A Notice of Discipline Hearing was issued on July 5, 2018, and served on Mr. Bruce.
16. Mr. Bruce has no prior discipline history with the Council.

#### **PROPOSED FINDINGS OF MISCONDUCT**

For the sole purposes of the Proposal and based on the facts outlined herein, Mr. Bruce proposes the following findings of misconduct be made by the CORC:

1. Mr. Bruce committed professional misconduct within the meaning of section 35(1)(a) of the RESA when acting as the listing agent for the Property, a new home built by an owner builder under the provisions of the HPA. In particular:
  - a. he failed to act with reasonable care and skill when he did not ensure that a disclosure notice was provided to the buyer making an offer for the Property, as required under section 21(2) of the HPA, that stated whether the Property was built under an Owner Builder Authorization and whether the Property was covered by a policy of home warranty insurance, contrary to Rule 3-4.

### **PROPOSED ORDERS**

Based on the facts herein and the Proposed Findings of Misconduct, Mr. Bruce proposes that the Notice of Discipline Hearing in this matter be resolved through the following Orders being made by the CORC, pursuant to section 43 of the RESA:

1. Mr. Bruce be reprimanded.
2. Mr. Bruce pay a discipline penalty to the Council in the amount of \$2,500 within ninety (90) days from the date of this Order.
3. Mr. Bruce, at his own expense, register for and successfully complete the course *Homeowner Protection Act: Protect Your Sellers and Yourself* offered by the Victoria Real Estate Board, in the time period as directed by the Council.
4. Mr. Bruce pay enforcement expenses to the Council in the amount of \$1,500 within sixty (60) days from the date of this Consent Order.
5. If Mr. Bruce fails to comply with any of the terms of this Order, a Discipline Committee may suspend or cancel Mr. Bruce's licence without further notice to him.

### **ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT**

1. Mr. Bruce acknowledges and understands that the Council may refer or decline to refer the Proposal to the CORC. If the Proposal is referred to the CORC, it may be accepted or rejected by the CORC. If the Proposal is rejected by the CORC, the matter may be referred to a disciplinary hearing.
2. Mr. Bruce acknowledges that he has 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 CORC; and, that he has obtained independent legal advice or has 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. Bruce acknowledges and is aware that the Council will publish the Proposal and the Consent Order or summaries thereof in its Report from Council newsletter, on the Council's website, on CanLII, a website for legal research and in such other places and by such other means as the Council in its sole discretion deems appropriate.
4. Mr. Bruce acknowledges and is aware that the Superintendent of Real Estate has the right, pursuant to section 54 of the RESA, to appeal any decision of the Council, including any Consent Order made by the Council in relation to this matter.
5. Mr. Bruce hereby waives their right to appeal pursuant to section 54 of the RESA.
6. The Proposal and its contents are made by Mr. Bruce 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. Bruce in any civil proceeding with respect to the matter.

"J. A Bruce"

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**JOHN ALEXANDER BRUCE**

**Dated 29th day of August, 2018**

Signature of John Alexander Bruce witnessed on  
the above date by

"H. Hoag"

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Witness Name *(Please Print)*

"H. Hoag"

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Witness Signature