

IN THE MATTER OF THE REAL ESTATE SERVICES ACT

- AND -

CASEY KEITH LEMOEL AND LEMOEL ENTERPRISES

**ORDERS UNDER SECTIONS 51 AND 49 OF
THE REAL ESTATE SERVICES ACT**

UPON REVIEWING the submissions and exhibits contained in the Investigative Report prepared by the staff of the Superintendent of Real Estate ("the Staff"), I am of the opinion that:

1. On September 18, 2007, the Superintendent of Real Estate ("the Superintendent") received a complaint that Casey Keith LeMoel ("LeMoel") and LeMoel Enterprises ("LE") were providing rental property management services without being licensed under the *Real Estate Services Act* ("the Act").
2. The Real Estate Council ("the Council") confirmed that neither LeMoel nor LE are licensed to provide real estate services in the Province of British Columbia.
3. The records of the Ministry of Finance, Corporate and Personal Property Registries for the Province of British Columbia indicate that LE is not incorporated in British Columbia.
4. LeMoel and LE have been the subject of two previous investigations by the office of the Superintendent into allegations of unlicensed real estate activity. In December 2005, an investigation revealed that LeMoel and LE were engaging in rental property management activities while unlicensed. LeMoel subsequently advised the office of the Superintendent that he would either transfer his property management business to a licensed real estate brokerage or, in the alternative, cease all unlicensed property management activity no later than July 31, 2006.
5. On July 31, 2006, [REDACTED] owner of Coldwell Banker Border Country Realty ("Border Country"), a licensed real estate brokerage located in Grand Forks, British Columbia, informed the office of the Superintendent that Border Country had employed LeMoel as an unlicensed property manager as of August 1, 2006.

6. In January 2007 a second complaint that LeMoel and LE were conducting unlicensed activity was received by the office of the Superintendent. A second investigation into the affairs of LeMoel and LE was conducted by the office of the Superintendent. The investigation indicated that LeMoel and LE were providing real estate services ostensibly on behalf of Border Country which were not subject to the exemption under section 2.14 of the Regulations for caretakers employed by brokerages. It was the opinion of the investigative staff that LeMoel and LE were engaged in the following activities:
 - (a) Negotiating and entering into contracts on behalf of the brokerage or owner of the rental real estate;
 - (b) Managing landlord and tenant affairs; and
 - (c) Advertising that LeMoel and LE were a licensed rental property manager in the Kootenay Boundary area.
7. On July 6, 2007, the investigative staff informed the Council of its findings. Border Country has been given notice of a disciplinary hearing that will be held by the Council in early 2008 to determine whether Border Country provided real estate services through an unlicensed person or persons, namely LeMoel and LE.
8. Pursuant to the latest September 18, 2007 complaint, the office of the Superintendent conducted a further investigation into the affairs of LeMoel and LE.
9. The complainant provided investigators with a copy of the Trail Times newspaper dated Friday, August 31, 2007, which contained the following advertisement:

Houses for Rent
Coldwell Banker Property Management Division
Border Country Realty
Experienced and Insured
Rental Management Service and Tenant Placement.
Call today for an information package.
Casey LeMoel – Property Manager
1-866-363-0344. Cell: 512-9449
www.bordercountryrealty.com
email: casey@lemoelenterprises.com

10. The complainant also provided investigators with a copy of the Trail Times newspaper dated Tuesday, September 25, 2007, which contained the following advertisement:

LeMoel Enterprises

A name you can trust in business.

1-250-364-0344

Coldwell Banker Border Country Realty Licensed Rental Division

Located in the LeMoel Enterprises office above the Trail Post Office

Licensed Experience Insured

Need your Property Managed? Call us today.

Casey LeMoel ~ Rental Expert

11. Investigators performed a search of the internet for Border Country on October 17, 2007. The search revealed the website www.bordercountryrealty.com, which contained the following information:

Welcome to Border Country Realty.

Coldwell Banker Border Country Realty is located in

Grand Forks, BC, Canada.

We have the following Website sections:

Rental Division Website

Browse online rental flyers and learn more about renting and property management. Our licensed Rental Division serves the Kootenay

Boundary and Central Kootenay areas.

Contact

For non-rental issues/questions

Phone: 1 250 442 2124

Fax: 1 250 442 3577

Address: 340 Market Avenue, Grand Forks, BC.

12. The Border Country website redirects visitors to LE's main website located at www.lemoelenterprises.com.

13. The LE website contains the following:

Business Profile

In August 2006, LeMoel Enterprises joined forces with Coldwell Banker to become a licensed property manager.

Casey's Column (Avoiding Disaster ~ The Tenancy Agreement)

Casey LeMoel is an experienced property manager and property investor in the Kootenay Boundary area.

14. The www.bordercountryrealty.com website is registered to LeMoel himself. David Marshall ("Marshall"), LeMoel's managing broker from Border Country, stated that neither he nor any of his staff were aware of the existence of either the www.bordercountryrealty.com website or the newspaper advertisements.
15. Further, on October 16, 2007, Marshall provided the following information to the investigative staff:
 - (a) LeMoel has been employed by Border Country as an unlicensed Property Manager since July 31, 2006 and currently manages about 27 rental properties in the Trail, British Columbia area;
 - (b) Marshall acknowledged that he has no control or influence over LeMoel's management of landlord and tenant affairs. LeMoel is the only person who has any direct contact with landlords and tenants alike;
 - (c) LeMoel advises landlords on the appropriate rental amounts for their properties and completes any and all arrangements between the landlords and their prospective tenants;
 - (d) LeMoel completes all management agreements and tenancy agreements, however he does not forward all of these agreements to Marshall's office in Grand Forks, British Columbia;
 - (e) Any and all funds collected by LeMoel from tenants or landlords are deposited by LeMoel into a trust account set up by Border Country; and
 - (f) LeMoel is not a salaried employee of Border Country but receives [REDACTED] of the monthly management fees charged to the property owners.
16. [REDACTED], the owner of a property that LeMoel previously managed, provided the following information:
 - (a) LeMoel arranged for four different tenants to rent [REDACTED] home between November 2005 and April 2007 and collected the rents for deposit into [REDACTED] bank account during this time;
 - (b) [REDACTED] has never dealt with anyone from Border Country, including Marshall; and
 - (c) [REDACTED] terminated LeMoel's services sometime in April 2007.
17. The investigative staff interviewed two property owners whose properties were being managed by LeMoel and LE. Both property owners indicated that they had never dealt with anyone from Border Country other than LeMoel. Both indicated

that they had entered into a management contract with LeMoel who was purportedly acting on behalf of Border Country.

18. Section 3(1) of the *Act* states:

A person must not provide real estate services to or on behalf of another, for or in expectation of remuneration, unless the person is

- (a) licensed under this Part to provide those real estate services, or
- (b) exempted by subsection (3) or the regulations from the requirement to be licensed under this Part in relation to the provision of those real estate services.

19. Section 1 of the *Act* defines "Real Estate Services" as:

- (a) rental property management services,
- (b) strata management services, or
- (c) trading services.

20. Section 1 of the *Act* defines "Rental Property Management Services" as meaning "any of the following services provided to or on behalf of an owner of rental real estate":

- (a) trading services in relation to the rental of real estate;
- (b) collecting rents or security deposits for the use of the real estate;
- (c) managing the real estate on behalf of the owner by
 - (i) making payments to third parties,
 - (ii) negotiating or entering into contracts,
 - (iii) supervising employees or contractors hired or engaged by the owner, or
 - (iv) managing landlord and tenant matters

but does not include an activity excluded by the regulation.

21. Section 1 of the *Act* defines "trading services" as meaning any of the following services provided to or on behalf of a party to a trade in real estate:

- (a) advising on the appropriate price for the real estate;
- (b) making representations about the real estate;
- (c) finding the real estate for a party to acquire;
- (d) finding a party to acquire the real estate;

- (e) showing the real estate;
 - (f) negotiating the price of the real estate or the terms of the trade in real estate;
 - (g) presenting offers to dispose of or acquire the real estate;
 - (h) receiving deposit money paid in respect of the real estate
- but does not include an activity excluded by regulation.

22. Section 2.14 of the Regulations states:

Subject to subsection (2), an individual who is employed as a caretaker or manager of rental real estate by a brokerage that is licensed to provide rental property management services is exempt from the requirement to be licensed under Part 2 of the *Act* in respect of any of the following activities in relation to those real estate services:

- (a) if the caretaker or manager complies with subsection (2), collecting money in relation to the rental real estate, including money collected as rent, security deposits or pet damage deposits;
- (b) showing the rental real estate to prospective tenants;
- (c) receiving and presenting applications in respect of the rental of the rental real estate from prospective tenants;
- (d) supervising employees or contractors hired or engaged by the brokerage;
- (e) communicating between landlords and tenants respecting landlord and tenant matters.

(2) On receipt of money referred to in subsection (1) (a), the exempt caretaker or manager must promptly deliver the money to the brokerage.

(3) Subsection (1) does not apply to a caretaker or manager who negotiates or enters into contracts on behalf of the brokerage or the owner of the rental real estate.

AND WHEREAS I find that:

1. Neither LeMoel nor LE is licensed under the *Act* for the purpose of conducting real estate services within the Province of British Columbia. A license is required pursuant to Section 3 of the *Act* for a person to provide real estate services to or on behalf of another.
2. LeMoel and/or LE are actively engaged in negotiating or entering into contracts on behalf of Border Country and property owners for the management of rental properties. Further, LeMoel and/or LE are negotiating or entering into contracts between the property owners and their tenants.
3. LeMoel and/or LE are receiving and presenting applications in respect of the rental of the rental real estate from prospective tenants. LeMoel and LE are collecting money in relation to the rental of real estate.
4. LeMoel and/or LE are supervising contractors hired by Border Country and/or LeMoel and/or LE. LeMoel and/or LE are communicating between landlords and tenants respecting landlord and tenant matters.
5. LeMoel and/or LE are advertising to find tenants to lease property which they are managing. In addition, LeMoel and/or LE are advertising to find property owners willing to have their rental property managed by them.
6. The exemption under Section 2.14 of the *Act* does not apply to the activities of LeMoel and/or LE as described above.
7. LeMoel and LE are engaging in real estate services for which a license under the *Act* is required. Neither LeMoel nor LE holds a license under the *Act*.

I THEREFORE CONSIDER that LeMoel and LE are conducting themselves in a manner that would enable me to make an order under section 49 of the *Act*.

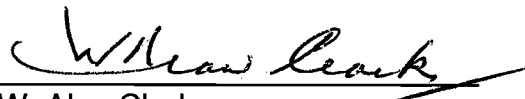
I FURTHER CONSIDER that the length of time that would be required to hold a hearing in order to make an order under section 49 of the *Act* would be detrimental to the public interest. A hearing would likely take months to prepare for and conduct. LeMoel and LE are conducting unlicensed activity without any supervision from a licensed person. Tenancy agreements and management agreements are not being kept at the brokerage as required but are being kept by an unlicensed person. LeMoel and LE have been warned in the past to refrain from conducting unlicensed activity, but have persisted in doing so.

I THEREFORE order pursuant to sections 51(2) (a) and 49(2) (a) of the *Act*, that Casey Keith LeMoel and LeMoel Enterprises:

Cease and desist conducting, directly or indirectly, real estate services, including rental property management services, in British Columbia, effective immediately.

TAKE NOTICE that Casey Keith LeMoel and LeMoel Enterprises may appeal this Order to the Financial Services Tribunal under section 54(1)(e) of the *Act*, or require a hearing before the Superintendent under sections 51(3) and 45(6) of the *Act*.

Dated at the
City of Surrey,
Province of British Columbia
this 26th day of November, 2007.



W. Alan Clark
Superintendent of Real Estate
Province of British Columbia

TO: Casey Keith LeMoel



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Grand Forks, BC, V0H 1H0