

IN THE MATTER OF THE REAL ESTATE SERVICES ACT

- AND -

OAK GROVE CAPITAL CORPORATION

-AND-

JAN PETER WALL

-AND-

RICHARD ALBERT BLINN

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

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

1. On or about December 8, 2008, the Office of the Superintendent of Real Estate (the "Superintendent") received a complaint alleging that Jan Peter Wall ("Wall") appeared to be providing real estate services without being licensed to do so under the *Real Estate Services Act*, S.B.C. 2004 c.42 ("RESA").
2. Oak Grove is a registered company in British Columbia, with a registered and records office at #200 – 848 Courtney Street in Victoria, British Columbia. Jan Peter Wall ("Wall") and Richard Albert Blink ("Blinn") are both directors of Oak Grove.
3. The Real Estate Council of British Columbia (the "Council") has confirmed that Wall, Blinn, and Oak Grove are not currently licensed to provide real estate services in the Province of British Columbia.
4. Section 1 of *RESA* provides the following definitions:

“providing”, in relation to real estate services, includes

- (a) offering to provide such services,
- (b) holding oneself out as a person who provides such services, or
- (c) soliciting for the purpose of the provision of such services;

"real estate" means

- (a) real property,
- (b) regardless of whether it is or is not an interest in real property, a cooperative interest, shared interest in land or time share interest, as these are defined in the *Real Estate Development Marketing Act*, and
- (c) a right in relation to real property that is defined by regulation to be real estate,

but does not include a right in relation to real property that is excluded by regulation;

"real estate services" means

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

“remuneration” includes any form of remuneration, including a commission, fee, gain or reward, whether the remuneration is received, or is to be received, directly or indirectly;

"rental property management services" means 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 the 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 regulation;

“rental real estate” means real estate that is or is intended to be rented or leased;

“trading services” means 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;

5. Section 3(1) of *RESA* states as follows:

Requirement for licence to provide real estate services

“3(1) 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 services, or

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

6. The complaint received by the Superintendent's office on or about December 8, 2008 was from a licensed realtor who had been contacted by Wall, and to whom Wall had represented his services as including advertising, showing property to buyers/tenants, holding open houses and arranging lease-to-purchase agreements with buyers and sellers.

7. On or about December 22, 2008, the Real Estate Council wrote the Superintendent's office alleging that Oak Grove might be providing unlicensed real estate services. Attached to the letter from the Real Estate Council were copies of two letters signed by Jan Wall of Oak Grove, each dated December 5, 2008, and each addressed to a licensed realtor, offering the following services:

“Our firm has tailored a “plan B” for realtors who are prepared to look at creative alternatives to earning a solid income in these hard times. Specifically we've crafted an Option-to-Purchase program that matches qualified buyers and sellers and steps them through the legal aspects of the transaction. Further, the program compensates realtors for leads that would otherwise never culminate in a business transaction.

...

We can help buyers even if they have no money to put down – if they have excellent credit and a steady job. Do you know anyone in that situation?”

8. On February 1, 2009, Staff member Larry Beryar (“Beryar”) reviewed the website www.oakgrove.ca. As the website was password protected, it could not be accessed.

9. On February 4, 2009 Staff searched the internet, and discovered a number of advertisements for Oak Grove's services, including the following:

(a) An advertisement on www.victoria.kijiji.ca, listed January 4, 2009, to “Lease-to-Purchase a Large House in high Quadra” which reads in part as follows:

“This beautiful, well-maintained 2,770 SqFt home will appeal to a large family that needs a 5BR, 2.5 bath house, 2 car garage – but just doesn't qualify for a mortgage...

Here's the deal in a nutshell: The purchase price is \$599,000 payable in two years. You will pay fair market rent of \$2,650 a month...

At the end of this period, you should be able to qualify for a traditional mortgage and complete the sale. Your purchase price and monthly payments will be locked in today. Variations on this theme are negotiable to suit your situation.

Contact me to get a full explanation about how 'rent-to-buy' operates and to view the property.

Jan Wall; 415.9617"

- (b) An advertisement on www.victoria.kijiji.ca, listed January 14, 2009, with the heading "A No Lose Deal ... Even If the Market Continues to Go Down which reads in part as follows:

"Are you ready to buy your new home, but are concerned that the real estate market is going down even further? If so, this deal is designed for you...

There are several houses available on these terms in the complex. They are all roughly \$560,000 to \$580,000 including GST (they are brand new). Initial deposit is \$15,000. Monthly rent is \$2200...

These are new townhouses in a strata complex in a desirable part of Victoria. They all have four bedrooms, three bedrooms and two car garages. Most have Dens as well.

For More Information:
Contact
Jan Wall
Oak Grove Capital Corporation
janwall@oakgrove.ca
250.721.4448"

- (c) An advertisement on www.usedvictoria.com, with the heading "3BR, 2BA Home for a Growing Family" which reads in part as follows:

"This warm and welcoming home is perfect for a growing family. The home has 3 bedrooms and 2 full baths...

The house is located at...Watson Street in Cobble Hill.

At \$360,000, this house is priced to sell when compared with other similar houses just being built and offered at \$550,000. This house needs some cosmetic attention, but nothing serious.

Jan Wall; 250.415.9617
Richard Blinn; 250.884.2733"

11. On February 18, 2009, Beryar called Wall, at which time Wall advised as follows:

- (a) His interest is in matching people who are interested in finding deals on a lease to purchase basis with others who are interested in selling on a lease to purchase basis.
- (b) To find buyers, which he describes as easy, he advertises on craigslist or on Kijiji. He also advertises for sellers on craigslist, although he describes that as "a bit more problematical."
- (c) "When the buyer enters into a lease-to-option contract with the seller, he pays that initial option payment and that initial option payment is generally around 3% of the value of the house... Then I ask the seller to pay me a flat \$5,000 out of that initial option payment."

12. On February 19, 2009, Wall provided Beryar with copies of some documents relating to Oak Grove's business, including the following:

- (a) Brochure entitled "Lease to Sell" which included the following subheadings and information:

"We Broker Lease to Sell Deals

Oak Grove Capital brokers Lease to Purchase and Lease to Sell agreements.

We are not real estate brokers.

However, we do catalog properties that are available on a "Lease to Sell" basis. More than that, we determine and advertise the terms the Sell/Landlord is prepared to offer to a Buyer/Tenant. We facilitate the negotiations between the two parties, but we are not a party to the final agreement.

We find Buyers/Tenants who are interested in acquiring properties on a Lease to Purchase basis. We determine the types of properties they are looking for and match them with properties that match their needs..."

The Devil is in the Details

...We provide assistance to all the parties in a number of ways. Specifically, we:

- Prepare property feature sheets to promote properties to Buyers/Tenants
- Prepare Buyer/Tenant profiles to promote them to Sellers/Landlords
- Introduce Buyers, Sellers and Investors
- Advise Owners/Landlords on staging their properties
- Advertise properties on Web sites and in newspapers
- Craft agreements that are acceptable to all the parties
- Provide draft contracts that can be tailored to meet individual needs

- Identify lawyers and notaries public who are experienced in handling Lease to Purchase deals
- Recommend steps Seller/Landlords can take to protect themselves.

Contact Us

Jan Wall, President

...

Richard Blinn, Executive VP

- (b) Information sheet entitled "Lease to Sell: Is It Right For You?" which included the following information under the heading "Our Fees for Brokering a Lease-to-Purchase Agreement":

Oak Grove Capital Corporation charges a fee for finding a buyer/tenant and brokering the agreements.

Oak Grove charges the seller/landlord 50% of the Initial Option Payment collected to a maximum of 3% of the sale price [sic] of the house. We charge a minimum fee of \$5,000."

AND WHEREAS I find that:

1. Neither Wall, nor Blinn, nor Oak Grove is licensed under *RESA* to provide real estate services within the province of British Columbia. A license is required pursuant to section 3 of *RESA* for a person to provide real estate services to or on behalf of another.
2. Real estate services under *RESA* include trading services and rental property management services. By advertising and making representations about real estate, finding purchasers/tenants for owners of real estate; finding real estate for purchasers/tenants, showing real estate and/or assisting the parties in negotiating either the price of the real estate or the terms of a contract of sale and/or lease, Wall, Blinn and Oak Grove are engaging in trading services and/or rental property management services for which a license is required.
3. Neither Wall, nor Blinn nor Oak Grove are exempted from the requirement to be licensed by subsection 3(3) of *RESA*, nor are they exempted from the requirement to be licensed by the Real Estate Services Regulation.
4. Wall, Blinn and Oak Grove are engaging in real estate services for which a license under *RESA* is required, although neither of them have the required license.

I THEREFORE CONSIDER THAT Wall, Blinn and Oak Grove are conducting themselves in a manner that would enable me to make an order under section 49 of *RESA*.

I AGREE with Staff that a hearing would require approximately two to three witnesses and would take approximately two days to complete, and could not be held for at least six months due to scheduling of parties, witnesses, counsel and the hearing officer.

I FIND that the length of time that would be required to hold a hearing in order to make an order under section 49 of *RESA* would be detrimental to the due administration of *RESA* given that it would likely result in further non-compliance with the provisions of *RESA*. Wall, Blinn and Oak Grove are actively soliciting property owners, as well as prospective purchasers/tenants and realtors, in an effort to offer unlicensed services, contrary to the provisions of *RESA*. Continued non-compliance would harm the reputation of the British Columbia real estate industry and would be detrimental to the public interest.

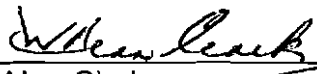
I AM FURTHER OF THE OPINION that it is in the public interest to make a summary order under section 51 of *RESA* so that the public is protected against further non-compliance with *RESA*.

I THEREFORE ORDER, pursuant to sections 51(2)(a) and 49(2)(a) of *RESA*, that Wall, Blinn and Oak Grove:

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

TAKE NOTICE that Wall, Blinn and Oak Grove may appeal this Order to the Financial Services Tribunal under section 54(1)(e) of *RESA*, or request a hearing before the Superintendent under sections 51(3) and 45(6) of *RESA*.

Dated at the City of Surrey, in the
Province of British Columbia
this 2nd day of April, 2009.


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

TO: Oak Grove Capital Corporation
#200 – 848 Courtney Street
Victoria, BC
V8W 1C4

Jan Peter Wall
[REDACTED]

Victoria, BC
[REDACTED]

Richard Albert Blinn
[REDACTED]

Victoria, BC
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Vancouver, BC
V6C 2T8