

# IN THE MATTER OF THE REAL ESTATE SERVICES ACT

- AND -

**IAN JAMES HORNER**

## 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 ("Staff"), I am of the opinion that:

1. On January 17, 2008, the Office of the Superintendent of Real Estate (the "Superintendent") received a complaint that Ian James Horner ("Horner") was providing rental property management services without being licensed under the *Real Estate Services Act* ("the Act").
2. The Real Estate Council of British Columbia ("the Council") confirmed that Horner is not licensed to provide real estate services in the Province of British Columbia.
3. Section 1 of the *Act* defines "real estate services" as:
  - (a) rental property management services,
  - (b) strata management services, or
  - (c) trading services.
4. 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 regulation.

5. Section 1 of the *Act* defines "strata management services" as meaning "any of the following services provided to or on behalf of a strata corporation":

(a) collecting or holding strata fees, contributions, levies or other amounts levied by, or due to, the strata Corporation under the Strata Property Act;

(b) exercising delegated powers and duties of a strata corporation or strata council, including

(i) making payments to third parties on behalf of the strata corporation,

(ii) negotiating or entering into contracts on behalf of the strata corporation, or

(iii) supervising employees or contractors hired or engaged by the strata corporation

but does not include any activity excluded by regulation.

6. 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.

7. 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) of the regulations from the requirement to be licensed under this Part in relation to the provision of those real estate services.

8. The complaint against Horner alleged that Horner was providing property management services for at least five units in a condominium complex known as Regency Gardens, located at [REDACTED] Vernon, British Columbia ([REDACTED]).

9. On March 17, 2008, [REDACTED] a tenant of one of the units in [REDACTED] provided Staff with the following information:

- (a) the Strata Council president, [REDACTED] had advised her that Horner provides property management services for at least five units in [REDACTED]
- (b) in December 2007 she complained to Horner about a recurring noise problem, which he assured her would be resolved; and
- (c) she had been advised by [REDACTED] the resident caretaker, that Horner had asked her to witness him placing a Notice of Eviction on the door of one of the units.

10. On March 17, 2008, [REDACTED] the resident caretaker at [REDACTED] provided Staff with the following information:

- (a) she has observed Horner carrying out maintenance work in some of the units at [REDACTED]
- (b) Horner had asked her in June 2007 to be a witness as he affixed a Notice of Eviction order on the door of one of the units;
- (c) when she complained of noise from one of the units in December 2007, Horner assured her that he would resolve the problem;
- (d) Horner subsequently emailed her about the steps he was taking to deal with the noisy tenant, advising that he had previously given the tenant a written warning, that he would speak with her again, that he had told "his tenant" that the neighbours might complain to the police, that she may be in breach of the bylaws, and may be fined if the noise continues; and

- (d) her friend, [REDACTED] had previously rented a unit in [REDACTED] through Horner.

11. On April 7, 2008, [REDACTED] advised Staff as follows:

- (a) she had leased two units at [REDACTED] through Horner between May 2006 and October 2007;
- (b) Horner had shown the apartments to her;
- (c) Horner had discussed rental terms with her;
- (d) Horner had conducted inspections of the units before she moved in;
- (e) Horner collected her rent each month, for which he issued receipts; and
- (f) Horner conducted the moving-out inspections.

12. On April 7, 2008, Dickson provided Staff with the following information:

- (a) Horner manages nine rental units at [REDACTED], being units 1, 3, 7, 8, 17, 30, 35, 36 and 38;
- (b) Unit 17 is owned by [REDACTED] who live in [REDACTED] Ontario;
- (c) when he spoke with [REDACTED] he was told that Horner was in the process of working on his license; and
- (d) when he checked with the owners of the 9 rental units, they each confirmed that Horner was providing property management services for them.

13. On April 8, 2008, [REDACTED] provided Staff with the following information:

- (a) he and his wife are the owners of [REDACTED]
- (b) he has employed Horner since June 2007 to provide services in respect of the rental unit, including the following:
  - (i) collection of rent;
  - (ii) depositing rental proceeds into a bank account;
  - (iii) showing the property and procuring tenants;

- (iv) carrying out maintenance work as needed; and
  - (v) managing tenant problems as they arise.
- (c) Horner is paid 10% of the rent for provision of these services;
- (d) Horner provided him with an Agreement for Caretaker Services dated January 1, 2008, setting out the responsibilities he would undertake, including the following:
- (i) collection of rents and security deposits;
  - (ii) payment of strata fees;
  - (iii) depositing rental income into the owner's bank account;
  - (iv) providing monthly financial statements;
  - (v) assessing units when vacated and preparing units for re-rental;
  - (vi) preparing and submitting rental advertisements;
  - (vii) showing apartments to prospective tenants and screening applicants;
  - (viii) serving notices and instructions to tenants; and
  - (ix) responding to and addressing tenant concerns.
- (e) pursuant to the Agreement for Caretaker Services, Horner would be paid for his services as follows:
- (i) 10% of the rental amount each month, including any month in which the unit is vacant; and
  - (ii) \$15 per hour for repairing and clearing, beyond normal usage, and for repairs and maintenance;
14. On April 9, 2008, [REDACTED] the owner of unit 7 [REDACTED] provided Staff with the following information:
- (a) he has been the owner of unit 7 for 18 years;
  - (b) he lives in [REDACTED] and rents unit 7;

- (c) he has employed Horner since April 2006 to provide the following services in respect of the rental unit:
    - (i) collection of rents;
    - (ii) depositing rental proceeds into a bank account;
    - (iii) advertising the unit for rent;
    - (iv) showing the property and procuring tenants; and
    - (v) managing tenant problems as they arise;
  - (d) he pays Horner 10% of the rental income for the services he provides;
  - (e) Horner gave him an Agreement for Caretaker Services dated January 1, 2008, the terms of which are identical to those in the Agreement for Caretaker Services Horner gave to [REDACTED]
15. Staff spoke with Horner by phone on April 16, 2008, at which time Horner advised as follows:
- (a) he has been providing "caretaking services" for six condominium units at [REDACTED] for the past two years;
  - (b) he has an agreement with each property owner to whom he provides his services;
  - (c) the services he provides include the following:
    - i. showing rental properties to prospective tenants;
    - ii. advising potential tenants on rental costs of the properties;
    - iii. advertising the properties for rent in the local newspaper; and
    - iv. carrying out maintenance work on the properties.
  - (d) he does not keep any security deposits, nor does he have a trust account for the rent which he collects.

AND WHEREAS I find that:

1. Horner is not licensed under the *Act* to provide 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. Horner is actively engaged in providing real estate services to or on behalf of others for or in expectation of remuneration.
3. Horner is not exempted from the requirement to be licensed by subsection 3(3) of the *Act*, nor is he exempted from the requirement to be licensed by the Regulations.
4. Horner is engaging in real estate services for which a license under the *Act* is required. Horner does not have the required license.

I THEREFORE CONSIDER that Horner is conducting himself in a manner that would enable me to make an order under section 49 of the *Act*.

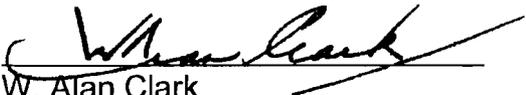
I FURTHER CONSIDER that the length of time that would be required to hold a hearing in order to make an order under section 49 of the *Act* would be detrimental to the public interest. A hearing would likely take at least two to three months to prepare for and conduct. Horner is presently conducting unlicensed activity without any supervision from a licensed person. He is collecting and holding money in relation to rental properties without the safeguards provided by the regulations. Public money is at risk.

I THEREFORE ORDER pursuant to sections 51(2) (a) and 49(2) (a) of the *Act* that Ian James Horner:

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

TAKE NOTICE that Ian James Horner, 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 ~~28th~~ day of April, 2008.

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

TO: Ian James Horner  
[Redacted]  
[Redacted]  
[Redacted]

Ian James Horner  
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