

IN THE MATTER OF THE REAL ESTATE SERVICES ACT

- AND -

BEVERLY DIANNE MOFFATT

-AND-

MOFFATT MANAGEMENT SERVICES

**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 June 18, 2008, the Office of the Superintendent of Real Estate (the "Superintendent") received a complaint that Beverly Moffatt ("Moffatt") and/or Moffatt Management Services ("MMS") were providing rental property management services in Prince George without being licensed to do so under the *Real Estate Services Act*, S.B.C. 2004, c.42 ("RESA").
2. MMS is not registered as a sole proprietorship, nor is it a registered company in British Columbia. A company with a similar name ("Moffatt Management Services Inc.") is a registered British Columbia company, carrying on business as a consulting firm, but is unrelated to MMS. Moffatt is neither a director nor officer of this company, and has never been associated with this company in any manner.

3. The Real Estate Council of British Columbia (the "Council") has confirmed that Moffatt and MMS are not currently licensed to provide rental property management services in the Province of British Columbia. Moffatt was intermittently licensed to provide both trading and rental property management services between July 7, 1994 and May 6, 2008. Most recently, she was an associate broker, licensed to provide trading and rental property management services with Realty Executives in Prince George from December 13, 2004 to May 6, 2008, when her license expired.

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 June 18, 2008 alleged that Moffatt/MMS were advertising properties for rent in a local newspaper in Prince George.

7. On June 18, 2008 Staff member Brian Kijowski ("Kijowski") reviewed the website for the Prince George Citizen newspaper at www.princegoergecitizen.com and discovered the following advertisements for units being rented by MMS:

- (a) "4 BDRM unit avail, Call Moffat Management 564-3165"
- (b) "3 BDRM unit avail, Call Moffat Management 564-3165"
- (c) "2 BDRM unit avail, Call Moffat Management 564-3165."

8. On November 12, 2008, [REDACTED] sent an email to the office of the Superintendent, complaining about Moffatt and MMS. In her complaint, [REDACTED] advised as follows:

- (a) She is the owner of a duplex located at [REDACTED] and [REDACTED] [REDACTED] in Prince George, British Columbia.
- (b) In July 2006, she entered into a verbal agreement with Moffatt/MMS to manage the [REDACTED] property.

- (c) On January 23, 2008, ██████ met with Moffatt and her assistant, ██████ to discuss having them manage both ██████ and ██████ ██████
 - (d) The arrangement ██████ had with Moffatt/MMS was that they would collect the rent by the 5th of the month, and deposit the rent into ██████ account by the 10th of the month. Moffatt/MMS would invoice ██████ for their services, for which they were to be paid by the 15th of the month. ██████ was charged 10% of the rent and all expenses in relation to the suites.
 - (d) ██████ terminated Moffatt/MMS's services in June 2008 as she was dissatisfied with them.
9. On January 5, 2009, Kijowski placed a pretext call to Moffatt. In that call, Kijowski indicated that he had a duplex in Prince George which he wanted Moffatt/MMS to manage. During that call, Moffatt advised as follows:
- (a) She conducts business as MMS.
 - (b) The services she provides through MMS include advertising, screening tenants, and collecting rent and depositing it into the owner's account.
 - (c) She charges 10% of monthly rent for her services, whether or not the property is occupied.
 - (d) If she arranges for a contractor to effect repairs on the property, she charges the owner 10% of the contractor's fee.
 - (e) She will seek the owner's approval for any repair costs over \$100. Repair costs less than \$100 will be invoiced without the owner's approval.
 - (f) She has full-time crews who look after maintenance and cleaning.
 - (g) She currently manages 140 properties.
 - (h) She does not currently hold a license to conduct rental property management activities.

10. At the end of their telephone call, Kijowski advised Moffatt that he was calling from the Superintendent's office, and that the activities in which she engaged required her to be licensed in accordance with the provisions of *RESA*. Moffatt was told that she must immediately cease all unlicensed activities which contravene *RESA*.
11. On January 6, 2009, Kijowski called Moffatt again and reiterated that she required a license to engage in rental property management. Moffatt advised Kijowski that she would not cease engaging in rental property management due to the number of clients that she has.

AND WHEREAS I find that:

1. Neither Moffatt nor MMS 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 rental property management services. By acting as an agent for property owners, showing rental properties, advertising rental properties and collecting rents, Moffatt and MMS are conducting rental property management activities for which a license is required.
3. Neither Moffatt nor MMS 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. Moffatt and MMS 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 Moffatt and MMS 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 three witnesses and would take approximately three 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*. This is of particular concern given Moffatt's statement that she currently manages 140 properties when neither she nor MMS are licensed. Of additional concern is Moffatt's refusal to cease engaging in unlicensed activity even when she knows that she is in breach of 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 Moffatt and MMS:

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

TAKE NOTICE that Moffatt and MMS 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 ^{28th} day of January, 2009.


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

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TO: Beverly Moffatt
[REDACTED]
Prince George, BC
[REDACTED]

Moffatt Management Services
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