

IN THE MATTER OF THE REAL ESTATE SERVICES ACT

- AND -

FOUNDATION PROPERTY MANAGEMENT

-AND-

SUSAN McQUEEN

**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, I am of the opinion that:

1. On May 5, 2008, the Office of the Superintendent of Real Estate (the "Superintendent") received a complaint that Foundation Property Management ("Foundation") was providing rental property management services without being licensed under the *Real Estate Services Act*, S.B.C. 2004, c.42 ("RESA").
2. Foundation is not a registered company in British Columbia.
3. Foundation's owner/manager is Susan McQueen ("McQueen").
4. The Real Estate Council of British Columbia (the "Council") has confirmed that Foundation and McQueen are not licensed to provide real services in the Province of British Columbia.
5. 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 purposes 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;

6. 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.

7. The May 5, 2008 complaint alleged that Foundation was advertising both short and long-term rentals in newspapers, but did not appear to be licensed under the provisions of *RESA*.

8. Staff of the Superintendent (the “Staff”) reviewed Foundation’s website at www.foundation-property.com on May 13, 2008 and June 9, 2008, and found the following information:

- (a) Under the heading "Welcome to Foundation Property Management", the following information was provided:

"Foundation Property Management is a privately-owned vacation and residential management company providing services to vacationers and home owners in Gibsons, Sechelt and Pender Harbour and places in between on the Sunshine Coast of BC...."

- (b) Under the heading "Foundation Services", the following information was provided:

"Vacationers

When looking for a vacation home, not only are you looking for accommodation, but you are also seeking an experience. Foundation Property is dedicated to providing a vacation property that meets your needs.

...

Feel free to browse the **available properties** or to learn more about vacationing on the sunshine coast **click here**.

Property Owners

As a homeowner, you can be rest-assured that your property will be taken care of like our own and communication will always be free-flowing. Please **contact us** for a full list of services offered for vacation and residential properties.

About Us

Foundation's Owner/Manager, Susan McQueen, has a strong sales background...

- (c) Advertisements for rental property, both long and short-term.
- (d) Contact information for Foundation was provided as follows:

[REDACTED]

Tel: [REDACTED]
Cell: [REDACTED]

Email: info@foundation-property.com

9. On June 9 and 10 2008, Staff sent a pretext email to "info@foundation-property.com" requesting property management services for a home in Sechelt, BC.

10. On June 12, 2008, McQueen wrote Staff in response, suggesting that they speak by phone to discuss the services Foundation provides, and the associated management fees.
11. On July 7, 2008, Staff contacted McQueen in response to her June 12, 2008 email, at which time McQueen advised as follows:
 - (a) She offers residential property management services for a fee of 10% of the monthly rental income;
 - (b) She charges a placement fee of one half of one month's rent;
 - (c) Her services include the following:
 - (i) interviewing and screening potential renters;
 - (ii) checking references;
 - (iii) conducting monthly checks on the property to ensure it is not being used as a grow op;
 - (iv) collecting rental payments; and
 - (v) arranging for necessary repairs costing up to \$100, and calling the property owner if a repair is likely to be over \$100 before making arrangements to hire a contractor;
 - (d) She has been a property manager for the past year; and
 - (e) As a property owner, one could "rest easy" knowing that she could advise insurers that she was the property manager, and would be available to check frequently on a vacant building in order to comply with any insurance policy requirements.
12. On July 8, 2008, McQueen sent Staff an outline of the services she offered, as well as two reference letters (one from a tenant and one from a homeowner). These contained the following information:
 - (a) The outline of services summarizes the services which McQueen/Foundation provide as follows:

Residential Services

- Market your rental property
- Negotiate rental/lease agreements
- Complete Accounting for Property

- Monthly Statement
- Tenant liaison
- Property Maintenance/Property Inspections
- Emergency Response

Vacation Services

- Providing Reservation Services
- Marketing and advertising to promote the homeowners property (on an international level)
- Providing Housekeeping services – maintaining hospitality standards
- Property Maintenance/Property Inspections

Miscellaneous Services

- New Build Cleaning Services – preparing the property/house for market.
- “Warm up” – For recreational property owners that would like their property cleaned, heat turned on, and prepared for their arrival.
- Property inspection – for recreational property owners or absentee owners who would like to have their property watched over.”

- (b) The reference letter from a homeowner, dated January 10, 2008, describes the services received as follows:

“I provide this letter as confirmation of my utmost satisfaction with the services and support provided by Sue McQueen and Foundation Property Management in the management of our property in Gibsons, BC. We were provide [sic] with a clear presentation of her offering, services and fee structures and once engaged she produced prompt results. She was thorough in her vetting of potential tenants and we are confident in her ongoing oversight of the property...”

- (c) The reference letter from a tenant, dated December 2007, describes the services received as follows:

“In mid-October 2007 I was living and working in Vancouver when I was offered employment on the Sunshine Coast. I was asked to begin work the first week of November. I believed I could find the right living situation in that period of time and so accepted the offer and the timeframe...”

...

I finally called Foundation Property Management to ask about two rentals listed in the local paper. Susan McQueen introduced herself and her business then asked me about my wishes and needs; she then explained that she had one place that seemed ideal...We made an appointment for the following day; after the viewing I had an opportunity to talk with the owners...We agreed on terms for the rental and Susan proceeded to manage all the reference checks and paper work in a timely and professional manner...

...[Susan] made herself available to answer any questions or concerns I had about the move or the tenancy agreement...”

13. On July 10, 2008, Staff advised McQueen by email that she and Foundation were the subject of investigation for unlicensed real estate services, contrary to the provisions of *RESA*.
14. On July 10, 2008, McQueen advised Staff, by email, that she had taken the licensing exam, but had failed it by one mark. She wrote: "I meant to retake the exam, but as I took on a new position and did the property management on the side with small client base (mostly for taking on clients from Realtors I know well), I left the retaking of the exam fall between the cracks..."
15. Staff confirmed for McQueen the licensing requirements under *RESA*.
16. On September 22, 2008, Staff reviewed the website at www.foundation-property.com and noted no substantial changes had been made since it had last been reviewed on June 9, 2008. The information contained under the headings "Welcome to Foundation Property Management" and "Foundation Services" is identical to that set out at paragraph 8 above. Both long and short term rentals continued to be advertised.

AND WHEREAS I find that:

1. Neither Foundation nor McQueen are 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. Foundation and/or McQueen are actively engaged in providing real estate services to or on behalf of others for or in expectation of remuneration.
3. Neither Foundation nor McQueen 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 Regulations.
4. Foundation and/or McQueen 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 Foundation and McQueen are conducting themselves in a manner that would enable me to make an order under section 49 of *RESA*.

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 *RESA* would be

detrimental to the public interest. A hearing would likely take at least six months to prepare for and conduct. Foundation and/or McQueen are presently conducting unlicensed activity without any supervision from a licensed person.

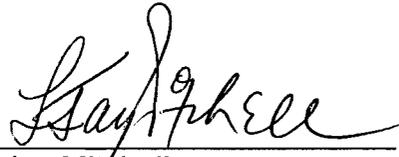
I AM FURTHER OF THE OPINION that it is in the public interest to make a summary order under section 51 of *RESA* so that the public is protected against further non-compliance with *RESA*.

I THEREFORE ORDER, pursuant to sections 51(2)(a) and 49(2)(a) of *RESA*, that Foundation and McQueen:

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

TAKE NOTICE that Foundation and/or McQueen may appeal this Order to the Financial Services Tribunal under section 54(1)(e) of *RESA*, or require 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 27th day of October, 2008.



L. Jay Mitchell
Acting Superintendent of Real Estate
Province of British Columbia

TO: Foundation Property Management



Susan Jill McQueen



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