

**IN THE MATTER OF The *Real Estate Act*, R.S.A. 2000, c. R- 5**

**AND**

**IN THE MATTER OF Ellen McNeill, then real estate associate registered with Zaytsoff Realty (Strathmore) Ltd. o/a Re/Max Realty Horizon, Discover Real Estate Ltd., and Impact Real Estate Group o/a Residential One Real Estate at various and all material times and currently unlicensed**

**INTRODUCTION**

1. The Executive Director of the Real Estate Council of Alberta conducted an investigation into whether the conduct of Ellen McNeill, real estate associate registered with Zaytsoff Realty (Strathmore) Ltd. o/a Re/Max Realty Horizon, Discover Real Estate Ltd., and Impact Real Estate Group o/a Residential One Real Estate, is deserving of sanction and/or whether she breached the requirements of the *Real Estate Act* (hereafter “the Act”) or the Rules prescribed pursuant thereto (hereafter “the Rules”) or the Code of Conduct prescribed pursuant thereto (hereafter “the Code of Conduct”).
2. The Executive Director and Ellen McNeill agree to resolve all matters against Ellen McNeill on the terms and conditions set out herein.

**AGREED STATEMENT OF FACTS**

3. Ellen McNeill (nee Story) (McNeill) was at all relevant times registered with and licensed by the Real Estate Council of Alberta. During the relevant periods she was registered with three different brokerages.
4. From June 30, 2002 to May 6, 2004 she was registered with Zaytsoff Realty (Strathmore) Ltd o/a Re/Max Realty Horizon.
5. From May 6, 2004 to August 11, 2004 she was registered with Discover Real Estate Ltd.
6. From August 24, 2007 to April 28, 2008 she was registered with Impact Real Estate Group o/a Residential One Real Estate.

7. Currently she is not registered.
8. Ellen McNeill has no prior discipline history with RECA.
9. Ellen McNeill has previously been known as Ellen Tompkins and Ellen Story. (maiden and married names)
10. On August 25, 1999 Ms. McNeill was found guilty of a criminal offence and a conviction was entered into the record. She paid a \$300.00 fine.
11. On June 20, 2002 Ellen Story completed an application for registration as Associate or Associate Broker for the 2001/2002 licence year to be registered with Re/Max Realty Strathmore.
12. On the registration form she answered NO to question 5: "In the last FIVE years have you been convicted of any offence under any law of any Country, Province or State (excluding traffic violations)?"
13. On September 26, 2002 Ellen Story completed a Registration Renewal Application for registration as Associate or Associate Broker for the 2002/2003 licence year to be registered with Re/Max Realty Strathmore.
14. On the renewal form she agreed in the Part 3 Declaration to comply with the *Real Estate Act*, Rules, Code of Conduct and laws that apply to all industry members trading in real estate in Alberta.
15. On September 30, 2003 Ellen Story completed a Registration Renewal Application for registration as Associate or Associate Broker for the 2003/2004 licence year to be registered with Re/Max Realty Strathmore.
16. On the renewal form she agreed in the Part 3 Declaration to comply with the *Real Estate Act*, Rules, Code of Conduct and laws that apply to all industry members trading in real estate in Alberta.
17. On May 6, 2004 D.Z., Broker for Re/Max Realty Strathmore submitted a Request for Registration Cancellation for Agents or Associate Brokers for the 2003/2004 Registration period for Ellen McNeill.
18. On May 6, 2004 Ms. McNeill completed an application for registration as an Associate or Associate Broker for the 2003/2004 term to be registered with Discover Real Estate Ltd.
19. On the registration form she answered NO to question 6: In the last FIVE years, have you been convicted of any offence under any law of any Country, Province or State (excluding traffic violations)?

20. On August 11, 2004 Ms. McNeill's registration with Discover Real Estate Ltd. was terminated.
21. On August 24, 2007 Ms. McNeill completed an application for registration as an Associate or Associate Broker for the 2006/2007 term to be registered with Residential One Real Estate.
22. On the registration form she answered NO to question 20: Have you been found guilty or convicted of any criminal offence or any other offence under any law of any country, province or state, excluding offences for which a pardon has been granted or provincial or municipal highway traffic offences resulting in monetary fines only?"
23. April 11, 2008 RECA Industry Standards advised RECA Audit & Investigations that routine follow-up by RECA licensing staff to ensure compliance with the eventual provision of a certified criminal record check on McNeill's re-entry as an industry member revealed that she has a criminal record and that it appeared that she had sworn a false affidavit.
24. Ms. McNeill terminated her real estate registration in April 28, 2008 and has not traded in real estate since.
25. Ms. McNeill indicates that she wishes to return to the real estate industry.

## **CONCLUSION**

26. By reason of the matters described herein, Ellen McNeill's conduct is deserving of sanction in:
  - a) **THAT** around or between the dates of June 20, 2002 and August 11, 2004, she failed to notify the executive director of a criminal conviction, contrary to s. 15 of the Rules made pursuant to the *Real Estate Act*, R.S.A. 2000, c. R-5, in that:
    - i) On June 20, 2002 Ellen Story completed an application for registration as Associate for the 2001/2002 licence year to be registered with Re/Max Realty Strathmore. On the registration form she answered **NO** to question 5: "In the last FIVE years have you been convicted of any offence under any law of any Country, Province or State (excluding traffic violations
    - ii) On May 6, 2004 Ellen McNeill completed an application for registration as an Associate or Associate Broker for the

2003/2004 term to be registered with Discover Real Estate Ltd. On the registration form she answered **NO** to question 6: In the last FIVE years, have you been convicted of any offence under any law of any Country, Province or State (excluding traffic violations)

- b) **THAT** around or between the dates of August 24, 2007 and April 28, 2008, she failed to notify the executive director of a criminal conviction, contrary to s. 40(1)(h) of the Rules (July 2006) made pursuant to the *Real Estate Act*, R.S.A. 2000, c. R-5 in that:

- i) On August 24, 2007 Ms. McNeill completed an application for registration as an Associate or Associate Broker for the 2006/2007 term to be registered with Residential One Real Estate. On the registration form she answered **NO** to question 20: Have you been found guilty or convicted of any criminal offence or any other offence under any law of any country, province or state, excluding offences for which a pardon has been granted or provincial or municipal highway traffic offences resulting in monetary fines only?"

- c) **THAT** around or between the dates of September 26, 2002 and June 20, 2002 and August 11 she participated in the creation of a contract and/or document(s) that she knew or ought to have known was false or misleading, contrary to section 4(d) of the *Code of Conduct* made pursuant to the *Real Estate Act*, R.S.A. 2000, c. R-5.

- i) On September 26, 2002 Ellen Story completed a Registration Renewal Application for registration as Associate or Associate Broker for the 2002/2003 licence year to be registered with Re/Max Realty Strathmore. On the renewal form she agreed in the Part 3 Declaration to comply with *the Real Estate Act*, Rules, Code of Conduct and laws that apply to all industry members trading in real estate in Alberta

- ii) On September 30, 2003 Ellen Story completed a Registration Renewal Application for registration as Associate or Associate Broker for the 2003/2004 licence year to be registered with Re/Max Realty Strathmore. On the renewal form she agreed in the Part 3 Declaration to comply with the *Real Estate Act*, Rules, Code of Conduct and laws that apply to all industry members trading in real estate in Alberta.

## **SETTLEMENT TERMS**

1. In settlement of these issues, Ellen McNeill will pay immediately to the Real Estate Council of Alberta a fine in the amount of \$2,500 (Two thousand five hundred dollars), together with costs in the amount of \$500 (Five hundred dollars).
2. Ellen McNeill agrees that as a condition of her authorization to trade in real estate, she will, within six months of the date of this decision successfully complete Part 4 of the Real Estate Associates Program (the *Real Estate Act*) offered by the Alberta Real Estate Association, or another course, substituted at the sole direction of the Executive Director. She will notify the Real Estate Council of Alberta upon completion of the educational requirement.
3. Ellen McNeill acknowledges that she has been given an opportunity to seek the advice of legal counsel and acknowledges that she is agreeing to the terms of settlement of her own free will.
4. Ellen McNeill is aware that a copy of the Consent Agreement will be placed on her file and may be reviewed and considered in any future disciplinary proceedings.
5. Ellen McNeill is aware the Real Estate Council of Alberta may publish the contents of this Consent Agreement.
6. Ellen McNeill hereby waives any rights she may have under the Act or otherwise to a review, hearing, appeal or other judicial proceeding involving the matter referred to herein.
7. These settlement terms are intended to resolve all matters described herein and, subject to the approval of the Hearing Panel, the Executive Director will take no further action under the Act or before the courts in this regard.

**IN WITNESS WHEREOF** the undersigned agree and accept the terms and conditions of this settlement this 28<sup>th</sup> day of November, 2008.

Signed and delivered  
in the presence of

K.K.  
Witness to the signature  
of Ellen McNeill

)  
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)

*Ellen McNeill*

The Executive Director recommends to the Hearing Panel the proposed terms of settlement based on the Agreed Statement of Facts.

**Real Estate Council of Alberta**

*P.F.*

Witness to the signature  
of Bob Myroniuk

Per:

*Bob Myroniuk*  
Executive Director

Recommendation Approved

\_\_\_\_\_✓\_\_\_\_\_

Recommendation Denied

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DATED at the City of Calgary, in the Province of Alberta this 22<sup>nd</sup> day of December, 2008.

**Real Estate Council of Alberta**

Per: *Wayne McAlister*  
Hearing Panel Chairperson

## **AFFIDAVIT OF EXECUTION**

CANADA	)	I, K.K. of
	)	
PROVINCE OF ALBERTA	)	the City of Calgary in the Province of Alberta
	)	
TO WIT:	)	MAKE OATH AND SAY:

1. THAT I was personally present and did see Ellen McNeill named in the annexed instrument, who is personally known to me to be the person named therein, duly sign and execute the same for the purpose named therein.
  
2. THAT the same was executed at the City of Calgary, in the Province of Alberta, and that I am the subscribing witness thereto.
  
3. THAT I know the said party and she is in my belief of the full age of eighteen years.

SWORN BEFORE ME at the City	)	
of Calgary, in the Province of	)	
Alberta this 28 <sup>th</sup> day of	)	
November, 2008.	)	
	)	
	)	K.K.
	)	(signature of witness)
	)	
	)	
<u>H.B.</u>	)	
A Commissioner for Oaths in and	)	
for the Province of Alberta		