

**IN THE MATTER OF the *Real Estate Act*, R. S.A. 2000, c. R- 5, previously  
*Real Estate Act* S.A. 1995, c. R. 4-5**

**AND IN THE MATTER OF John Croft, Agent (Salesperson), at J.J.  
Barnicke Edmonton Ltd. and previously of CB Richard Ellis Alberta  
Limited**

**INTRODUCTION**

1. The Executive Director of the Real Estate Council of Alberta conducted an investigation into whether the conduct of John Croft, registered with J.J. Barnicke Edmonton Ltd. of Edmonton, Alberta is deserving of sanction and/or whether he 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")
2. The Executive Director and John Croft agree to resolve all matters against John Croft on the terms and conditions set out herein.

**AGREED STATEMENT OF FACTS**

3. John Croft ("Croft") was registered with CB Richard Ellis Alberta Ltd. from November 1995 to March 17, 1999. During the time that Croft was an agent with CB Richard Ellis Alberta Limited ("CB"). CB listed a property (the "Property") located in Edmonton. Croft was one of three agents assigned, by CB, to service the listing. The Property was listed for \$800,000.00. Offers were generated however no offer was taken to completion. Croft generated another offer (the "Offer") from a numbered company 725034 Alberta Ltd. Croft was in a dual agency.
4. Counters were made back and forth until the final agreed upon price was \$625,000.00. The offer included two of the following clauses:
  - (a) The Purchaser may assign its interest as Purchaser, but such assignment shall not release [the original purchaser] from any obligations or representations to the terms of this Offer.
  - (b) The Vendor acknowledges that the Purchaser may assign this contract to different named parties of which one of the shareholders is a licensed Real Estate agent in the province of Alberta. The Vendor also acknowledges that purchaser may sell the Property sometime in the future for a profit or loss but intends to hold the Property as a long-term investment.
5. The purchaser, 725034 Alberta Ltd. assigned the Property to another numbered company 828276 Alberta Ltd. (the "Assignee").

6. The Assignee had three shareholders one of which was a numbered company 718937 Alberta Ltd. The numbered company 718937 had two shareholders one being another numbered company 760719 Alberta Ltd. 760719 Alberta Ltd. had five shareholders all of which were related to Croft. Croft himself had a 20% share in 760719 Alberta Ltd.
7. One of the shareholders of 828276 was another industry member.
8. Croft advised an Investigator of the Real Estate Council of Alberta that the disclosure as set out in paragraph 4 (b) above was the disclosure of his interest as purchaser in the Property. Croft also advised the Investigator that he made oral disclosure, of his interest in the Property, to the seller. The seller denied knowledge of Croft's ownership interest.
9. Croft advised an Investigator of the Real Estate Council of Alberta that he did not advise the seller in writing of the second industry members interest in the Property as the second industry member was not contemplated when the Offer was presented.

### **CONCLUSION**

10. By reason of the matters described herein, Croft's conduct is deserving of sanction in that he:
  - (a) Failed to disclosure in writing to the parties to the trade his interest as purchaser in the Property in breach of Rule 29 (a) (I) of the Rules made pursuant to the *Real Estate Act* S.A. 1995 c. R-4.5.
  - (b) Croft made a representation in a real estate purchase contract that was misleading in that he wrote " the purchaser may assign this contract to different named parties of which one of the shareholders is a licensed Real Estate Agent in the province of Alberta" when the licensed real estate agent was Croft himself in breach of section 4 of the Code made pursuant to the *Real Estate Act* S.A. 1995 c. R 4-5 and currently the *Real Estate Act* R.S.A. 2000 c. R-5.
  - (c) Failed to disclose all relevant information to his client, the seller of the Property by not advising that there were two industry members involved with the purchase of the Property in breach of section 2 the Code of Conduct made pursuant to the *Real Estate Act* S.A. 1995 c. R-4.5 and currently the *Real Estate Act* R.S.A. 2000 c. R-5.

### **SETTLEMENT TERMS**

11. In settlement of these issues, John Croft, agent, agrees to pay to the Real Estate Council of Alberta a fine in the amount of \$5,000.00.
12. In settlement of these matters, John Croft, agrees to pay to the Real Estate Council of Alberta costs in this matter in the amount of \$750.00.

13. In settlement of these matters, John Croft agrees that as a condition to his license he will complete the course *Ethical Practice in Real Estate* offered by Alberta Real Estate Association prior to December 31, 2002. John Croft will supply the Real Estate Council of Alberta proof of his successful completion of *Ethical Practice in Real Estate* prior to January 15, 2003.
14. John Croft acknowledges that he has been given an opportunity to seek the advice of legal counsel and acknowledges that he is agreeing to the terms of settlement of his own free will.
15. John Croft is aware that a copy of the Consent Agreement will be placed on his file and may be reviewed and considered in any future disciplinary proceedings.
16. John Croft is aware the Real Estate Council of Alberta may publish the contents of this Consent Agreement.
17. John Croft hereby waives any rights he may have under the *Act* or otherwise to a review, hearing, appeal or other judicial proceeding involving the matter referred to herein.
18. 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 8 day of Oct, 2002.

Signed and delivered in the presence of	)	
"G.M."	)	"John Croft"
Witness to the signature of John Croft	)	John Croft

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

"J.C."	Per: "Bob Myroniuk"
Witness to the signature of Bob Myroniuk	Bob Myroniuk, Executive Director

Recommendation Approved

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Recommendation Denied

DATED at the City of Calgary, in the Province of Alberta, this 17<sup>th</sup> day  
of OCTOBER, 2002.

Real Estate Council of Alberta

Per: "Graham Downey"

Hearing Panel Chair

**AFFIDAVIT OF EXECUTION**

CANADA ) I, G.M. of  
 ) (name of witness),  
 PROVINCE OF ALBERTA ) the City of Edmonton in the Province of Alberta  
 )  
 TO WIT: ) MAKE OATH AND SAY:

1. THAT I was personally present and did see John Croft 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 Edmonton, in the Province of Alberta, and that I am the subscribing witness thereto.
3. THAT I know the said party and he is in my belief of the full age of eighteen years.

SWORN BEFORE ME at the City  
 of Edmonton, in the Province of  
 Alberta this 8<sup>th</sup> day of  
October, 2002.

"J.S."  
 \_\_\_\_\_  
 A Commissioner for Oaths in and for  
 the Province of Alberta

"G.M."  
 \_\_\_\_\_  
 (signature of witness)