

**DECISION OF
THE SASKATCHEWAN REAL ESTATE COMMISSION
AND CONSENT ORDER**

Lunde (Re), 2019 SKREC 34

Date: September 19, 2019
Commission File: 2019-29

**IN THE MATTER OF
THE REAL ESTATE ACT, C. R-1.3 AND
IN THE MATTER OF LAURIE LUNDE**

Before: A Saskatchewan Real Estate Commission Hearing Committee
comprised of the following:

Jeffrey P. Reimer- Chairperson

Cliff Iverson

Bill Preston

CHARGE and ADMISSION OF MISCONDUCT:

[1] The registrant is charged with and is admitting to professional misconduct as follows:

Count 1:

That, contrary to section 39(1)(c) of *The Real Estate Act*, Ms. Lunde breached Commission Bylaw 728 by failing to take down a “For Sale” sign from the window of a property after the listing had expired.

LEGISLATION:

[2] Section 39(1)(c) of *The Real Estate Act* states:

“Professional misconduct is a question of fact, but any matter, conduct or thing, whether or not disgraceful or dishonourable, is professional misconduct within the meaning of this Act, if...it is a breach of this Act, the regulations or the bylaws or any terms or restrictions to which the registration is subject.”

[3] Bylaw 728 states:

“Signs which designate property as being on the market, such as ‘for sale’, ‘sold’, ‘for rent’, ‘will develop to suit’, etc. may not be placed on the property without the written consent of the owner of that property or an authorized representative of the owner.”

FACTS:

[4] In accordance with subsection 9(4) of The Real Estate Regulations (“the Regulations”), the Hearing Committee accepts Ms. Lunde’s Statement of Facts and Admissions, which includes the following relevant points:

[5] Ms. Lunde was continuously registered as a salesperson under the provisions of *The Real Estate Act* in the Province of Saskatchewan with the Saskatchewan Real Estate Commission from November 15, 2011 until February 25, 2014.

[6] Ms. Lunde has been continuously registered as a branch manager under the provisions of *The Real Estate Act* in the Province of Saskatchewan with the Saskatchewan Real Estate Commission since February 25, 2014.

[7] Ms. Lunde has taken the following real estate courses:

- Phase 1 – Real Estate as a Professional Career;
- Residential Real Estate as a Professional Career;
- Commercial Real Estate as a Professional Career;
- Farm Real Estate as a Professional Career; and
- Real Estate Office Management & Brokerage.

[8] Ms. Lunde has completed the continuing professional development seminars each registration year since 2011-2012.

[9] Ms. Lunde is presently registered under the provisions of *The Real Estate Act* as a branch manager with Global Direct Realty Inc.

[10] In the spring of 2019, the Property was listed for sale with Global Direct Realty Inc.

[11] Ms. Lunde acted as the listing agent.

[12] On March 21, 2019, the listing of the Property expired.

[13] Another registrant, Registrant A, had a different unit at the complex listed for sale and, while showing her listing, she noticed that Ms. Lunde’s “For Sale” sign remained in the window of the Property and that Ms. Lunde’s lockbox was still present even though the listing had expired.

- [14] On March 27, 2019, Registrant A sent Ms. Lunde a courtesy text to find out if the Property was going to be re-listed.
- [15] In response, Ms. Lunde advised that the Property was now a “pocket listing”.
- [16] Registrant A advised that the sign should still come down and Ms. Lunde replied that it was “on the list”.
- [17] Registrant A’s text message got swallowed up with many other text messages and Ms. Lunde forgot about the sign again. Had someone contacted Ms. Lunde about the sign, she believes she would have remembered to take it down right away.
- [18] The “For Sale” sign remained on display in the window.
- [19] Registrant A has had to explain to potential buyers that, even though there was a “For Sale” sign in the window, the unit was not actually listed.
- [20] On April 22, 2019, Registrant A filed a complaint against Ms. Lunde with the Commission.
- [21] On April 24, 2019, a letter was sent to Ms. Lunde advising of the complaint and requesting her response.
- [22] Ms. Lunde took down the “For Sale” sign after receiving notice of the complaint from the Commission.
- [23] Ms. Lunde acknowledges that she forgot about the “For Sale” sign because it had been installed in the window of the Property.
- [24] Drivers passing by the Property were unable to see this forgotten sign.
- [25] Ms. Lunde’s stats for viewings of the Property were extremely low (i.e. 4 viewings in 6 months of listing).
- [26] As of May 2, 2019, the listing of the Property was active again on the MLS®.
- [27] Ms. Lunde is a high volume agent who tries very hard not to break the rules, but no one is faultless.

REASONS:

- [28] The Investigation Committee and Ms. Lunde considered the following as relevant in agreeing to the within consent order:

Mitigating Factors

[29] Ms. Lunde was co-operative with the investigation.

Aggravating Factors

[30] Ms. Lunde is registered as a branch manager.

[31] Ms. Lunde has a previous sanction for a violation of the bylaws:

- In *Lunde (Re)*, [2018 SKREC 13](#) (file # 2015-50), Ms. Lunde was charged with professional misconduct contrary to Bylaw 706 for publicly discrediting a competitor. She received an order of reprimand and a \$2,000 fine for the breach.

Prior Decisions & Other Considerations

[32] In May of 2012, the Appeals Committee of the Real Estate Council of Ontario rendered a decision [In the Matter of Suzette Thompson](#) (“*Thompson*”). The Appeals Committee in *Thompson* set out a series of factors to be considered when determining the appropriate sanction for a registrant found in breach of the legislation. The factors are as follows:

1. The nature and gravity of the breaches of the Code of Ethics.
2. The role of the offending member in the breaches.
3. Whether the offending member suffered or gained as a result of the breaches.
4. The impact of the breaches on complainants or others.
5. The need for specific deterrence to protect the public.
6. The need for general deterrence to protect the public.
7. The need to maintain the public’s confidence in the integrity of the profession.
8. The degree to which the breaches are regarded as being outside the range of acceptable conduct.
9. The range of sanction in similar cases.

[33] These factors are reasonable considerations and can offer guidance to members of a Hearing Committee tasked with crafting an appropriate sanction for a registrant found to have committed professional misconduct. These factors have been consistently applied in Saskatchewan Real Estate Commission consent orders since September 2016.

1. The nature and gravity of the breaches of the Code of Ethics.

[34] Ms. Lunde failed to remove a “For Sale” sign from the window of a property after the listing had expired. The sign stayed up for over a month after the expiration of the listing.

2. The role of the offending member in the breaches.

[35] Ms. Lunde was the only registrant involved in her breach of the legislation.

3. Whether the offending member suffered or gained as a result of the breaches.

[36] There is no evidence to suggest that Ms. Lunde suffered a loss or experienced a gain as a result of her breach of the legislation.

4. The impact of the breaches on complainants or others.

[37] There is no evidence of consumer harm arising out of Ms. Lunde's breach of the legislation, but there was some public confusion over whether or not the Property was listed for sale.

5. The need for specific deterrence to protect the public.

[38] Specific deterrence is needed to ensure that Ms. Lunde knows that leaving a "For Sale" sign on a property after the listing has expired is not appropriate. Ms. Lunde should be reminded that the written authorization of the owner of a property is required to put up a "For Sale" sign.

6. The need for general deterrence to protect the public.

[39] General deterrence is needed to remind all registrants that it is never appropriate to leave a "For Sale" sign on a property once the listing agreement has expired.

7. The need to maintain the public's confidence in the integrity of the profession.

[40] The public must be reassured that the real estate agents they work with are taking steps to adhere to the bylaws regarding whether or not a "For Sale" sign should be displayed at a property.

8. The degree to which the breaches are regarded as being outside the range of acceptable conduct.

[41] Ms. Lunde's conduct falls below the standard expected of registrants, but it was not egregious.

9. The range of sanction in similar cases.

A. What is an appropriate sanction for Ms. Lunde's breach of Bylaw 728?

[42] There are only 2 previous decisions dealing with a breach of Bylaw 728.

[43] In *Molenaar (Re)*, [2018 SKREC 12](#) (file #2016-42) ("*Molenaar*"), Christopher Molenaar received an order of reprimand and a \$1,000 fine for his breach of Bylaw 728. He also received an order of reprimand and a \$750 fine for violating section 57(1) of the Act. The owners of a property, Seller A and Seller B, were separating and decided to sell the property. Mr. Molenaar arranged to meet with Seller A to discuss listing the property for sale.

[44] When he met with Seller A, Mr. Molenaar was told that Seller A had authority to sign documents on Seller B's behalf. Seller A did not provide copies of the documentation he said granted him authority to sign on behalf of Seller B. Seller A signed the Seller's MLS® Brokerage Contract he had received from Mr. Molenaar and Mr. Molenaar put a "For Sale" sign on the lawn in front of the property. Sometime later, Seller B saw the "For Sale" sign on the front lawn and contacted Mr. Molenaar to request that it be taken down. Mr. Molenaar complied.

Mr. Molenaar later learned that the documents Seller A had signed did not grant Seller A sole authority to deal with the sale of the property. Seller B did eventually sign a Power of Attorney granting Seller A authority to handle the sale of the property on her behalf.

- [45] Mr. Molenaar was co-operative with the investigation, signed a Statement of Facts and Admissions acknowledging his error, and had no previous sanction history.
- [46] Seller B became aware that the property was listed for sale when she saw a “For Sale” sign on the lawn.
- [47] Ms. Lunde’s breach of Bylaw 728 is more serious than that of the registrant in *Molenaar*. Ms. Lunde is registered as a branch manager and has a previous sanction history. Ms. Lunde had permission from all sellers on title to put up a “For Sale” sign when she listed the house, but she forgot to remove the “For Sale” sign after the listing expired. In contrast, Mr. Molenaar failed to properly obtain written authorization from one of two sellers to put up a “For Sale” sign.
- [48] In *Calibaba (Re)*, [1998 SKREC 1](#) (#1997-45) (“*Calibaba*”), William Calibaba was issued an order of reprimand and a \$100 fine for breaching Bylaw 728 by placing a sign on a property without the written consent of the owner.
- [49] The fact that the seller had asked Mr. Calibaba to place a “For Sale” sign on the property without written authorization did not relieve the registrant of his responsibility to conduct his activities within the guidelines of the legislation. Mr. Calibaba was not remorseful for his actions and the Hearing Committee was concerned that he understood that all registrants in the province abide by the same rules. The Hearing Committee was concerned that Mr. Calibaba did not seem to understand that the fact that there was no harm in this particular case did not mean that there was no potential for problems.
- [50] Ms. Lunde’s breach of Bylaw 728 is more serious than that of the registrant in *Calibaba*. The seller specifically asked Mr. Calibaba to put a “For Sale” sign on the property without written authorization. While this does not excuse Mr. Calibaba’s conduct, it does show that the seller wanted the sign there. In contrast, Ms. Lunde left the “For Sale” sign up at the Property after the agreed-upon listing period had expired and failed to remove it after being reminded by a fellow registrant.
- [51] *Calibaba* was decided in 1998. In 2008, the Saskatchewan real estate market underwent a significant expansion that saw a significant rise in property values. As property values rise, there is a corresponding increase in the commissions registrants can expect to earn on trades in real estate. Fines ordered by the Commission to act as deterrents against misconduct must keep pace with rising commissions or the Commission runs the risk of fines coming to be seen as a “cost of doing business”.

[52] A letter of reprimand and a fine of \$1,250 are appropriate sanctions for Ms. Lunde's breach of Bylaw 728.

[53] As Ms. Lunde has agreed to sign this consent order, there will be no order as to costs.

CONSENT ORDER:

[54] In accordance with *The Real Estate Act*, its Regulations, and the Commission Bylaws, and with the consent of Ms. Lunde, and the Investigation Committee of the Saskatchewan Real Estate Commission, the Hearing Committee hereby orders:

[55] With respect to Count 1, the charge of professional misconduct contrary to section 39(1)(c) of *The Real Estate Act* for breach of Bylaw 728:

1. Ms. Lunde shall receive an order of reprimand for the violation of Bylaw 728;
2. Ms. Lunde shall, within 30 days of the date of this order, pay to the Saskatchewan Real Estate Commission a \$1,250.00 fine for the said violation of the bylaw; and
3. Ms. Lunde's registration shall be suspended if she fails to make payment as set out above.

[56] There shall be no order as to costs.

Dated at Regina, Saskatchewan this 19th day of September, 2019.

"Jeffrey P. Reimer"
Jeffrey P. Reimer, Chairperson