

## RECO Discipline: Grow House Disclosure



**By Brian Madigan**

So, **what are the rules related to grow houses?** Does the agent have to disclose them? What about the advertising and the listing?

1. At all relevant times Wilma Jones was a Member of RECO and was registered as a salesperson with the broker Brokerage ABC Realty.

2. In 2002 the dwelling situated on property was used for the cultivation of marijuana plants. It was a "**grow house**".

The Regional Police determined that, as of September 2002, there were 215 marijuana plants located on the Property at different levels of growth, including in the hallways and basement of the dwelling, at an estimated value of approximately \$223,000.00. The grow house had been operating for an indeterminate time.

3. By an Agreement of Purchase and Sale dated March 15, 2003 (the "2003 Agreement of Purchase and Sale") a buyer identified as Albert Smithson agreed to purchase the Property, which transaction was completed on June 30, 2003. Jones represented Albert Smithson as the buyer's representative in the 2003 Transaction.

4. Prior to the execution of the 2003 Agreement of Purchase and Sale, the prior use of the Property as a grow house was disclosed to Jones. The 2003 Agreement of Purchase and Sale included the following **written disclosure**:

*The Buyer acknowledges that the use of the property and buildings and structures thereon may have been for the growth or manufacture of illegal substances and acknowledges that the Seller makes no representations and/or warranties with respect to the state of repair of the premises and the Buyer accepts the property and the buildings and structures thereon in their present state and in an "as is" condition.*

5. On January 25, 2005 Jones listed the Property for Sale on the City XYZ Real Estate Board Multiple Listing Service (the "MLS") on behalf of the seller. The MLS **Listing** prepared at the authorization of Jones stated the following:

*Lovely Home! Close To All Amenities, Street B and Street C, Street D, Close To Shopping Mall.*

*All Electric Light Fixtures, Fridge, Stove, Washer, Dryer, B/I Dishwasher, B/I Microwave,*

*California Shutters, Cac, Cvac, Gdo And Remotes, Interlocking walkway.*

*Entrance to*

*House From Garage.*

*No Disappointments.*

*24 Hours Notice To Tenants For Showings. Thanks For Showing!*

6. On April 16, 2005, Jones showed the property to Bill Holden who became a client of the Brokerage ABC.

7. On April 18, 2005 Holden and the Smithson made an agreement of purchase and sale for the Property with a completion date of June 17, 2005.

**Jones**, on behalf of Brokerage ABC Realty, **represented all parties** to that transaction.

8. In June 2005, prior to the completion date, Holden became aware of the prior use of the Property as a grow house. Up to this point in time, Jones had not disclosed to her client, Holden, that the Property had been a grow house, nor did she give him a copy, or disclose the existence of the written disclosure that she and the seller were given in the 2003 Transaction, described above.

9. From June 8, 2005, Holden called Jones and left several telephone voice messages. After he contacted the office manager at the Brokerage, Jones Holden's call and indicated that she was aware that a previous owner had been preparing the Property to be a grow house but the operation was stopped by police before it began.

Jones indicated that she had forgotten to tell this to Holden. After this conversation, Jones also faxed to Holden the written disclosure about the grow house which she had been provided in the 2003 Transaction.

10. On June 9, 2005 Holden requested a mutual release from the 2005 Agreement of Purchase and Sale, including return of his deposit funds.

11. **Jones failed to disclose** that the Property had been a grow house i.e., failed to disclose what she had been told about the Property and in light of that information, failed to verify whether the Property had been a grow house on behalf of her client, Bill Holden when this information could have practicably been obtained.

12. The Property was later re-sold. Jones did provide disclosure with respect to

the grow house to the ultimate purchasers. The Property was inspected, which did not uncover evidence of structural damage to the Property resulting from the grow house.

**The RECO Panel concluded:**

Jones is responsible under the following Rules of RECO Code of Ethics:

**Rule 1 – Ethical Behaviour** – A member shall:

- 1) endeavour to protect and promote the best interests of the Member's client.
- 2) endeavour to protect the public from fraud, misrepresentation or unethical practice in connection with real estate Transactions.

**Rule 2 – Primary Duty to Client** – A member shall endeavour to protect and promote the best interests of the Member's Client. This primary obligation does not relieve the Member of the responsibility of dealing fairly, honestly and with integrity with others involved in each transaction.

**Rule 10 – Misrepresentation or Falsification** – A member shall not make any statement or participate in the creation of any document or statement that the Member knows or ought to know is false or misleading.

**Rule 11 – Discovery of Facts** – A member shall discover and verify the pertinent facts relating to the Property and Transaction relevant to the Member's Client that a reasonably prudent Member would discover in order to fulfill the obligation to avoid error, misrepresentation or concealment of pertinent facts.

**Rule 21 – Advertising** – A member shall ensure that all advertising and promotion by or on behalf of the Member, including for Properties and services, is not false, misleading or deceptive.

RECO concluded with an Administrative Penalty of \$15,000.00 payable to RECO within 180 days.

**COMMENT**

This particular case proceeded as an agreed statement of facts. Basically, that means that Wilma Jones pleaded guilty to the charges as presented by RECO.

There are a few interesting points:

- She clearly knew about the grow house operation
- She had an obligation to disclose that information to the public (any third parties)
- She had a greater duty to disclose that information to her own client

- Mention should have been made in the listing or at the very least a comment to contact the listing agent
- Information needed to be verified if it was unclear
- Advertising needed to be accurate

### **Recommendations:**

- Do not conceal information about grow houses
- Ensure that some note is placed upon the listing (even if it is simply contact)
- Be forthright about your knowledge
- Consider not acting for both parties
- Refer to buyer to another agent
- Avoid the conflict of interest
- Never place the interest of one party over that of the other client

By way of further comment, the information at the time was available from the police. Some police forces will not disclose this information anymore due to the provisions of the *Privacy Act*. So, be careful. If you're suspicious, make inquiries. Also, consider including a condition in the Offer to protect the buyer

***As a rule, I use fictitious names. The actual case is published on RECO's website and is available to the public. For educational purposes, the names of the parties really don't have any bearing. If you need to quote the case, you will have to obtain the proper legal citation.***

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