

**BEFORE THE WEST VIRGINIA REAL ESTATE COMMISSION**

**IN THE MATTER OF:**

**STEVE DUBRUELER**  
**Licensed Real Estate Broker**  
**License No. WV-0003503**

**Complaint No. P-16-034**  
**consolidated with**

**Complaint No. C-17-009**

**NETTIE SEATON**  
**Licensed Salesperson**  
**License No. WV-0003148**

**CONSENT DECREE**

Now comes the Respondents, Steve DuBrueler (hereinafter at times "Respondent" or "Broker DuBrueler"), Nettie Seaton (hereinafter at times "Respondent" or "Salesperson Seaton") (collectively "Respondents"), and the West Virginia Real Estate Commission (hereinafter "Commission"), by Cheryl L. Dawson, its Chairman, for the purpose of resolving a complaint filed against Respondents by Clifford Allan Poots and Jennifer Niebyl (hereinafter at times "Complainants in P-16-034"). As reflected in this Consent Decree, the parties have reached an agreement in which Respondents agree and stipulate to the Findings of Fact and Conclusions of Law set forth in this Consent Decree concerning the proper disposition of this matter. The Commission, having approved such agreement, does hereby Find and Order as follows: —

**FINDINGS OF FACT**

1. The Commission, as the state entity created to regulate the conduct of real estate brokers, associate brokers and salespersons, has jurisdiction over this Complaint.
2. Respondent DuBrueler is a broker doing business as Premier Homes in Berkeley Springs, West Virginia, holding broker license number WV-0003503.

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3. Respondent Seaton is a real estate salesperson licensed by the Commission, holding license number WV-0003148, working under the supervision of Respondent DuBrueler.
4. Complaint P-16-034 was filed on June 23, 2016, and a timely response was filed, after which the Commission requested additional information from Respondents.
5. The Commission, at its meeting on September 21, 2016, found probable cause to proceed against Respondents in Complaint P-16-034 upon a finding that some of the allegations, if true, constituted violations of various provisions of West Virginia Code §§ 30-40- 1 *et seq.*
6. The Commission thereafter, based on its investigation of Complaint P-16-034, initiated a second complaint against Respondents at its meeting on November 14, 2016, in connection with certain matters of concern regarding the Notices of Agency Relationship in the relevant transaction file.
7. By agreement of the parties, negotiations proceeded for the resolution of certain matters raised in Complaint P-16-034 and allegations which would have been set forth in Commission-Initiated Complaint C-17-009, with Respondents waiving their right to have the new allegations set forth, filed and served in a second complaint to which they could respond, and all matters which would have been set forth in Complaint C-17-009 are resolved in this Consent Decree.
8. The Complaints involve a somewhat convoluted real estate transaction for the sale of 3095 Lake Ferndale Drive in Springfield, West Virginia (hereinafter referred to as “the Lake Ferndale transaction”) involving the following entities in addition to Respondents:
  - a. Complainants in P-16-034 were the Sellers of the property (“Sellers”) and listed same with Respondents by agreement dated July 7, 2015;
  - b. A couple who were potential buyers, who are referred to herein as “the Spicers” or “makers of Offer #1” and who were represented by a salesperson with another company; and

- c. The couple who ultimately purchased the property, who are referred to herein as “Purchasers” or “Wineberg-Freeman” or individually as “Ms. Wineberg” and “Mr. Freeman” and who were represented by Respondent Seaton.

9. Several of the allegations set forth in Complaint P-16-034, even if true, do not violate the West Virginia Real Estate License Act (the “Act”) or the legislative rules of the Commission, and the Commission makes no findings regarding same.

10. The Commission is proceeding on the violations evidenced by the following documents provided or the lack of certain documentation, as follows:

- a. SELLER’S LISTING AGREEMENT AND SIGNED NOTICES OF AGENCY RELATIONSHIP

- (i) In the Listing Agreement under the heading Dual Representation, Sellers consented generally “to allow Purchasers to be shown said property listed with the Broker through a sales associate.”
- (ii) In the preceding paragraph headed “DISCLOSED DUAL REPRESENTATION” it states: The written consent required from the parties *in each case* will be accomplished via execution of the appropriate disclosure form *at the time of the contract offer*. [Emphasis added.] This contract language comports with the agency notice requirements of the Act.
- (iii) There was no Notice of Agency Relationship presented to Sellers at the time of Purchasers’ offer showing that Sellers were aware that Respondent Seaton was also representing the Purchasers. Two Notices of Agency Relationship were provided to the Commission, not in response to the Complaint, but at the specific request of the Commission during its investigation of this Complaint. These documents reflect that Sellers signed two Notices of

Agency Relationship on July 7, 2015. Respondent Seaton represented that both notices were signed by Sellers on that date.

- (A) “Notice #1” checks the box that Respondent Seaton is acting as agency for the Seller while “Notice #2” checks that Respondent Seaton is the agent for both the Seller and Buyer. Sellers’ signatures, as well as Respondent Seaton’s signature, appear to be identical on both notices.
- (B) The certification on each Notice states that the signer has read and understood the information contained in the Notice and has been provided with signed copies prior to signing any contract. However, Sellers contend they never signed, nor did they receive a copy of Notice #2, but had a copy of Notice #1.
- (C) Sellers never signed a Notice of Agency Relationship which specifically indicated that Respondent Seaton was also representing Purchasers.

b. **PURCHASERS’ OFFER TO PURCHASE “SALES CONTRACT”**

- (i) On January 20, 2016, Ms. Wineberg signed and initialed a sales contract on her own behalf and also on behalf of Mr. Freeman, placing Mr. Freeman’s signature erroneously under “Seller.”
- (ii) The next day, on information and belief, Mr. Freeman signed on his own behalf in the proper column under “PURCHASER” and crossed out the prior day’s invalid signature.

c. PURCHASERS' "CONSENT" TO RESPONDENT SEATON'S AGENCY

After repeated requests to Respondents for documentation of an agreement or other indication that Purchasers consented to representation by Respondent Seaton, Broker DuBrueler provided a 2-page explanation entitled "REAL ESTATE 'AGENCY' IN WEST VIRGINIA" which was signed by Purchasers on January 26, 2016. This was similar to a document signed by Sellers on July 7, 2016. The document is not really a consent to representation even if it were signed prior to Purchasers' signing of the sales contract, but it was not signed until January 26, 2016, the same day as the belated Notice of Agency Relationship.

d. PURCHASERS' NOTICE OF AGENCY RELATIONSHIP

The Notice of Agency Relationship signed by the Purchasers was signed by Respondent Seaton on January 21, 2016, bears the initials "JF" and "WW" with the date 1/25/16 and shows Ms. Weinberg and Mr. Freeman's signatures with a January 26, 2016 date. The Act and related rules require that the Notice of Agency Relationship be signed prior to the offer to purchase, which had been signed several days earlier.

11. The Commission finds that:

- a. Assuming Notice #2 was a valid Notice of Agency Relationship signed by Sellers, Respondent Seaton should have given Sellers a true copy of Notice #2 but did not;
- b. Respondent Seaton should never have presented Sellers with Purchasers' offer without the proper and valid signature of Mr. Freeman;
- c. Respondents should have had but did not have a document in their file whereby the Purchasers timely consented to representation by Respondent Seaton, in accordance with W. Va. Code R. § 174-1-22.4;
- d. Respondent Seaton should have had Purchasers sign the Notice of Agency Relationship prior to Purchasers signing the sales contract and should have had

Sellers sign a new Notice of Agency Relationship or affirm their prior signing of Notice #2 specifically acknowledging that Respondent Seaton also represented Purchasers in accordance with W. Va. Code § 30-40-26(d) and W. Va. Code R. § 174-1-22.5;

- e. Respondent Seaton breached her fiduciary duty owed to Sellers by not notifying them specifically of her dual agency with Purchasers at the time she presented Purchasers' sales contract to Sellers; and
- f. Respondent Seaton's acts and conduct in the Lake Ferndale transaction constitutes or demonstrates incompetency and improper dealing.

12. The Commission is also concerned with this transaction because, looking at the file as a whole, it appears that Respondents appeared to favor the Purchasers over the makers of Offer #1, perhaps influenced by the fact that the makers of Offer #1 were represented by their own agent who would have been entitled to part of the commission on the sale. This finding is in part based on the fact that Respondent Seaton knew that both the makers of Offer #1 (the Spicers) and Purchasers wanted the property, that both the makers of Offer #1 and Purchasers presented offers on the same day (with an invalid signature on Purchasers' offer), and that the Spicers' offer was always considered a backup offer even though the Spicers asserted they were willing to make a higher offer and could have been given an opportunity by Respondent Seaton to make their highest and best offer to Sellers. In fact, there is evidence in the file that Sellers wanted to sell the property to the makers of Offer #1 and evidence that suggests Sellers felt pressured to accept the Purchasers' offer, although that pressure may have been more a result of the litigation initiated by Purchasers and not the actions of Respondents. Still, had Respondents given these highly motivated potential buyers an opportunity to make their "highest and best offer" by a stated deadline, many of the other issues presented in this

transaction would have been alleviated, and Sellers may have realized a higher price for the property and/or may have been able to sell their property to their preferred buyer.

13. Regarding Sellers' Notices of Agency Relationship signed at or around the time of the listing agreement, the Commission is proceeding with the resolution of violations related to the Lake Ferndale transaction without making a finding of fact regarding the possible alteration of Notice #1 to create Notice #2 upon Respondent Seaton's agreement that, when she is representing both the Buyer and Seller in a real estate transaction, she will ensure the signatures of all parties to the transaction will appear on the same Notice of Agency Relationship document, thus clearly indicating her dual agency is with the full knowledge and written consent of both parties as required by West Virginia Code R. §174-1-22.

14. The Commission further finds that:

- a. The Lake Ferndale transaction as a whole indicates that both Respondents were quite deficient in their knowledge of agency law and understanding of proper disclosure and consent within the transaction; and
- b. Broker DuBrueler had a general lack of knowledge about this file both during the transaction and the investigation by the Commission despite being involved at least to the extent that he wrote the makers of Offer #1 by letter dated March 7, 2016, advising them that they should seek legal counsel and stating that Sellers and Purchasers (the makers of the "primary contract") had been likewise instructed since there was a case now pending with an attorney.

15. Respondent Seaton admits:

- (a) she should have provided but did not provide Sellers a copy of Notice #2, in violation of W. Va. Code § 30-40-19(a)(13);

- (b) she should have had but did not have Sellers sign an updated Notice of Agency Relationship specifically acknowledging that Respondent Seaton represented both parties in connection with Purchasers' offer to purchase and did not have Purchasers sign the required Notice of Agency Relationship prior to having them sign their offer to purchase, in violation of W. Va. Code § 30-40-26(d) and W. Va. Code R. § 174-1-22.1;
- (c) she should have but did not disclose to Purchasers that she represented Sellers prior to the showing of the property or the initiation of negotiations, in violation of W. Va. Code R. § 174-1-22.2.
- (d) she should have had but did not have adequate documentation in her file showing that at the time of Purchasers' offer she was acting for both the Sellers and Purchasers in the Ferndale transaction with both parties' knowledge and prior written consent, in violation of W. Va. Code § 30-40-19(a)(7) and W. Va. Code R. § 174-1-22.4;
- (e) she should have never presented Sellers with Purchasers' offer without the proper signature of Mr. Freeman, in accordance with W. Va. Code R. § 174-1-22.5;
- (f) she should have notified Sellers of her dual agency with Purchasers at the time she presented Purchasers' sales contract to them and gotten their consent and accepts that not doing so constitutes a breach of the fiduciary duty she owed to Sellers; and
- (g) that her acts and conduct in the Lake Ferndale transaction constituted or demonstrated incompetency and improper dealing.

16. Respondent DuBrueler admits that he failed to adequately supervise Respondent Seaton in connection with the Lake Ferndale transaction.

17. The parties have agreed to settle the Complaints informally through the entry of this Consent Decree.



18. The Commission has incurred expenses in connection with these complaints in an amount in excess of \$3,725.00, which expenses relate to the Commission's legal and procedural expenses, as well as time expended by Commission staff in the review and investigation of Complaint P-16-034, the initiation of Complaint C-17-009, and other expenses incurred by the Commission in the prosecution and resolution of the Complaints.

### **CONCLUSIONS OF LAW**

1. West Virginia Code § 30-40-1 *et seq.*, vests the Commission with the authority and responsibility to regulate real estate brokers, associate brokers and salespersons in the State of West Virginia.
2. West Virginia Code § 30-40-7 gives the Commission all the powers set forth in West Virginia Code § 30-1-1 *et seq.* and additional powers, including the discretionary power to "impose one or more sanctions as considered appropriate in the circumstances for the discipline of a licensee. Available sanctions include, but are not limited to, denial of a license or renewal thereof, administrative fine not to exceed one thousand dollars per day per violation, probation, revocation, suspension, restitution, required additional education, censure, denial of future license, downgrade of license, reprimand or order the return of compensation collected from an injured consumer."
3. W. Va. Code § 30-40-19(a)(7) provides that the Commission may revoke, suspend or impose any other sanction against a licensee if the licensee "[a]cts for more than one party in a transaction without the knowledge and written consent of all parties for whom he or she acts."
4. West Virginia Code § 30-40-19(a)(12) provides that the Commission may revoke, suspend or impose any other sanction against a licensee if the licensee "[f]ails to disclose, on the notice of agency relationship form promulgated by the [C]ommission, whether the licensee represents the seller, buyer or both."

5. West Virginia Code § 30-40-19(a)(13) provides that the Commission has the authority to revoke, suspend or otherwise discipline a licensee if the licensee “[f]ails to voluntarily furnish copies of [various specific documents including the notice of agency relationship] to each party executing the same.”
6. West Virginia Code § 30-40-19(a)(30) provides that the Commission has the authority to revoke, suspend or otherwise discipline a licensed broker if the broker “[f]ails to adequately supervise all associate brokers and salespersons employed by him or her.”
7. W. Va. Code §30-40-19(a)(31) provides that the Commission may revoke, suspend or impose any other sanction against a licensee if the licensee: “(b)reaches a fiduciary duty owed by a licensee to his or her principal in a real estate transaction.”
8. W. Va. Code §30-40-19(a)(37) provides that the Commission may revoke, suspend or impose any other sanction against a licensee if the licensee: “(e)ngages in any act or conduct which constitutes or demonstrates bad faith, incompetency or untrustworthiness, or dishonest, fraudulent or improper dealing.”
9. West Virginia Code § 30-40-26(d) states that “[e]very licensee shall disclose in writing, on the notice of agency relationship form promulgated by the [C]ommission, whether the licensee represents the seller, the buyer or both. The disclosure shall be made prior to any person signing any contract for representation by a licensee or a contract for the sale or purchase of real estate.”
10. Among the rules implementing W. Va. Code § 30-40-26(d) and W. Va. Code R. § 174-1-22 regarding Agency Disclosure sets forth the following provisions:
  - a. Each licensee shall provide a written notice disclosing which party the licensee is representing as agent to all parties to a real estate transaction. The required written notice shall be signed by all parties, and the real estate broker shall maintain a copy of the notice in his or her transaction files. The licensee shall execute this written notice prior to any party signing any contract for representation, offer to purchase, to sell, or to exchange real estate for which a broker’s license is required by W. Va. Code §§ 30-40-1, *et seq.* W. Va. Code R. § 174-1-22.1.

- b. Any licensee acting as agent of a buyer, shall disclose his or her agency relationship to the seller, or the broker representing the seller, prior to any showing of the property or the initiation of negotiations whichever occurs first. W. Va. Code R. § 174-1-22.2.
  - c. A licensee may not be the agent for both the buyer and the seller without obtaining the written consent of both the buyer and the seller. W. Va. Code R. § 174-1-22.4.
  - d. If change in a licensee's agency status makes an earlier disclosure inaccurate, incomplete or misleading, the licensee shall prepare a revised disclosure form and immediately present it to all parties to the transaction. The revised disclosure must be dated and must be acknowledged in writing by all parties. W. Va. Code R. § 174-1-22.5.
11. A contract for the sale of land to be enforceable, it must be signed by the actual person to be charged thereby or by his or her legal agent. W. Va. Code. § 36-1-3.
12. The Commission may assess administrative costs, which shall be placed in the account of the Commission. Any fine shall be deposited in the state treasury's general revenue account. West Virginia Code § 30-1-8(a).

### CONSENT

Respondents, by signing below, agree to the following:

1. Respondents are represented by counsel and execute this Consent Decree voluntarily, freely, without compulsion or duress and mindful that it has legal consequences. No person or entity has made any promise or given any inducement whatsoever to encourage Respondents to make this settlement other than as set forth herein. Respondents acknowledge that they may pursue this matter through appropriate administrative and/or court proceedings and are aware of their legal rights regarding this matter, but intelligently and voluntarily waive such rights.
2. Respondents waive their right to have Commission-Initiated Complaint C-17-009, which involved issues relating to the Notices of Agency Relationship, filed and served and further agree to

waive their right to respond to the allegations, instead resolve those matters through this Consent Decree.

3. Respondents consent to the findings above and the entry of the following Order.

### **ORDER**

On the basis of the foregoing, the Commission hereby **ORDERS** as follows:

1. Respondent Seaton is hereby **SUSPENDED** for a period of one-year for the violations set forth herein, effective from the date of this Order's entry by the Commission. Such suspension is stayed immediately provided Respondent Seaton complies with the provisions of this Consent Decree and with the West Virginia Real Estate License Act and related Legislative Rules.
2. Respondent Seaton is **REPRIMANDED** and is **ORDERED** to pay to the State of West Virginia, by and through the Commission, a fine in the total amount of Two Thousand Dollars (\$2,000.00) in the following amounts for the following violations:
  - a. Two Hundred Dollars (\$200.00) for failing to give Sellers a copy of Notice #2, in violation of West Virginia Code § 30-40-19(a)(13);
  - b. Two Hundred Dollars (\$200.00) for presenting Sellers with Purchasers' offer without the proper and valid signature of Mr. Freeman in violation of general legal principles regarding what constitutes a valid, legal signature;
  - c. Two Hundred Dollars (\$200.00) for failing to obtain Purchasers' timely written consent to representation by Respondent Seaton, in violation of W. Va. Code § 30-40-19(a)(7) and W. Va. Code R. § 174-1-22.4;
  - d. Four Hundred Dollars (\$400.00) for failing to have Purchasers sign the Notice of Agency Relationship prior to Purchasers signing the sales contract and failing to have Sellers sign a new Notice of Agency Relationship or affirm their prior signing of

Notice #2 specifically acknowledging that Respondent Seaton also represented Purchasers, in violation of W. Va. Code § 30-40-19(a)(7), W. Va. Code § 30-40-26(d) and W. Va. Code R. § 174-1-22.5;

- e. Five Hundred Dollars (\$500.00) for breaching the fiduciary duty she owed to Sellers by not notifying them specifically of her dual agency with Purchasers at the time she presented Purchasers' sales contract to Sellers in violation of W. Va. Code § 30-40-19(a)(31); and
- f. Five Hundred Dollars (\$500.00) for demonstrating incompetency and improper dealing in the Lake Ferndale transaction, in violation of W. Va. Code § 30-40-19(a)(37).

3. Respondent DuBrueier is hereby **REPRIMANDED** and is **ORDERED** to pay to the State of West Virginia, by and through the Commission, a fine in the amount of Seven Hundred Fifty Dollars (\$750.00) for failure to supervise his salesperson, in violation of W. Va. Code § 30-40-19(a)(30).

4. Prior to April 30, 2017, Respondents shall each complete a total of seven (7) hours of approved continuing education on Agency, which shall be in addition to the continuing education required for annual renewal, and shall submit documentation to the Commission demonstrating successful completion of each class or course.

5. When he or one of his licensees is representing both the Buyer and Seller in a real estate transaction, Respondent DuBrueier shall ensure the signatures of all parties to the transaction will appear on the same Notice of Agency Relationship document, thus clearly indicating the dual agency is with the full knowledge and written consent of both parties as required by West Virginia Code R. § 174-1-22.

6. Respondents shall pay administrative costs associated with this matter in the amount of Three Thousand Seven Hundred and Twenty-Five Dollars \$3,725.00, which amount may be divided

between Respondents as they consider fair and reasonable, but both parties shall be liable for the entire amount of administrative costs.

7. The total payment of Six Thousand Four Hundred and Seventy-Five Dollars (\$6,475.00) shall be paid by certified check or money order payable to the State of West Virginia and sent directly to the Commission's office within thirty (30) days of the date of entry of the Consent Decree.

8. Any deviation from the requirements of this Consent Decree, without the prior written consent of the Commission, by Respondent Seaton shall constitute a violation by that Respondent of an Order of the Commission and shall, upon Board action, result in the lifting of the stay ordered herein, which suspension shall be extended until such time as Respondent Seaton achieves full compliance with the terms of this Consent Decree. If probable cause is found based on new allegations against Respondent Seaton of violations of the West Virginia Real Estate License Act and Legislative Rules in connection with any other transaction, the stay shall, upon Board action, be lifted and in effect for a newly defined period of one year. The Commission shall notify Respondent Seaton via certified mail of the Board action and, if the stay of the suspension is lifted, the new dates such suspension is in effect.

The events giving rise to this Consent Decree shall be considered in the determination of the kind and extent of additional sanctions against Respondent Seaton for any subsequent violations. Such possibility of enhancement shall be in effect for three (3) years subsequent to the entry of this Order.

9. Any deviation from the requirements of this Consent Decree, without the prior written consent of the Commission, by Respondent DuBrueler shall constitute a violation by Respondent DuBrueler of an Order of the Commission and may, upon Board action, result in the summary suspension of Respondent DuBrueler's license until such time as Respondent DuBrueler achieves full compliance.

The Commission shall immediately notify Respondent DuBrueler via certified mail of the alleged violation and whether there is a summary suspension of his license. Respondent DuBrueler may request reinstatement of his license, which shall be probationary, through renewal of this Consent Decree, or execution of a new Consent Decree which may contain different or additional terms. The Commission is not bound to comply with Respondent DuBrueler's request for probationary reinstatement.

In the event Respondent DuBrueler contests the allegations of violation of the Consent Decree resulting in the suspension of the violating Respondent's license, he may request a hearing to seek reinstatement of his license. Any such hearing shall be scheduled and conducted in accordance with the provisions of West Virginia Code §§ 30-1-8 and 30-40-1 *et seq.* and any procedural rules promulgated by the Commission. At its discretion, the Commission also may schedule a hearing on its own initiative for the purpose of allowing the Commission to consider further discipline against Respondent DuBrueler based upon his violation of this Order of the Commission.

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[signatures appear on next page]

**AGREED TO BY:**

  
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**STEVE DUBRUELER**

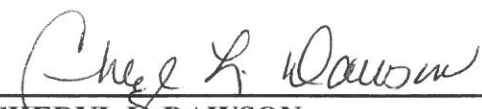
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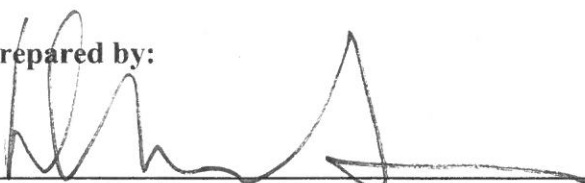
  
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**NETTIE SEATON**

4-5-2017  
\_\_\_\_\_  
**DATE**

**ENTERED** into the records of the Real Estate Commission this 17<sup>th</sup> day of May, 2017.


**WEST VIRGINIA REAL ESTATE COMMISSION,**

By:   
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**CHERYL L. DAWSON,**  
**Its Chairperson**

Prepared by:  
  
\_\_\_\_\_  
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**Reviewed and approved by:**

  
\_\_\_\_\_  
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