



**IN THE MATTER OF THE MORTGAGE BROKERS ACT  
R.S.B.C. 1996, c. 313**

**AND**

**EMERALD CAPITAL CORPORATION and PETER MILLER**

**CONSENT ORDER, ADMISSIONS AND WAIVER**

The following agreement has been reached between Emerald Capital Corporation ("Emerald") and Peter Miller ("Miller") and the Registrar of Mortgage Brokers (the "Registrar"):

**A. ORDERS**

Emerald and Miller consent to and the Registrar makes the following orders:

1. That Emerald and Miller, jointly and severally, pay an administrative penalty in the amount of \$5,000 pursuant to section 8(1.1) of the Mortgage Brokers Act ("the Act"), and that Emerald and Miller, jointly and severally, pay costs in the amount of \$1,000 pursuant to section 6(9) of the Act.
2. Miller may pay the sum of \$6,000, which represents costs and an administrative penalty, in 12 monthly instalments of \$500, commencing on March 1, 2010 and to be paid on the first day of each month thereafter until the total sum has been paid in full.
3. That Staff of the Registrar ("Staff") conduct two further examinations of Emerald's mortgage broker files in 2010. The cost of these examinations shall be borne by Emerald, at a rate of \$80/hour for Staff's time in conducting same. The maximum cost for each examination shall be \$2,000.

**B. FACTS AND ADMISSIONS**

As a basis for these orders, Emerald and Miller acknowledge the following facts as correct and make the following admissions:

1. Emerald is a registered mortgage broker under the Act under registration number X022569. Emerald operates from its registered head office address at #603 – 325 Howe Street, Vancouver, B.C.
2. Miller is a director of Emerald and is a submortgage broker under the Act (registration number 096199), registered to Emerald as the principal of the mortgage broker entity since 1992.
3. In November 2009 Staff commenced an examination of the mortgage broker activities of Emerald. The examination included the review of ten mortgage files arranged through Emerald.
4. Based on the examination, Staff identified several compliance issues with respect to Emerald's mortgage broker activities.

#### Conflict of Interest Disclosure to Lenders

5. On all ten mortgage broker files examined, Emerald represented the borrower in the mortgage transaction. In all but one transaction, Emerald charged the borrower a fee for arranging the transaction. In all situations where Emerald received a fee from the borrower there was no Form 11 Conflict of Interest disclosure provided to the lender disclosing that it would be compensated in the transaction by receiving a fee from the borrower. In addition, in one transaction the spouse of a submortgage broker registered to Emerald was the borrower and no Form 11 Conflict of Interest Disclosure was provided to the lender disclosing that an associate or related party was the borrower in the mortgage transaction.

#### Conflict of Interest Disclosure to Borrowers

6. In all cases where Emerald represented both the borrower and the lender in the mortgage transaction, the Form 10 Conflict of Interest Disclosure provided to the borrower did not disclose that Emerald was representing the lender as well. In addition, in two situations, the Form 10 contained in the files was not signed and dated by the borrower.

#### Cost of Credit Disclosure

7. Cost of credit disclosure issues includes missing or incomplete disclosure in the file and disclosure not displaying the annual percentage rate. Some of the cost of credit disclosures do not include all the costs associated with the respective credit arrangement such as appraisals costs and application fees charged by

lenders. In addition, on some disclosures, information regarding mortgage proceeds withheld from the advance to be applied to monthly mortgage payments or to be applied to pay off the borrower's existing debts is not shown.

#### Investor/Lender Disclosure Statement

8. In all cases where Emerald represented a private investor/lender who was the lender in the mortgage transaction, Emerald did not disclose on the Form 9 Investor/Lender Disclosure Statement provided to the investor/lender that it also represented the borrower in the transaction.

#### WK/TD Mortgage Transactions

9. In August 2009 WK contacted Miller seeking first mortgage financing on a residential property registered solely in the name of WK's mother-in-law, TD. The existing first mortgage on the property was in default at the time and foreclosure action was pending. WK was the covenantor on the existing first mortgage.
10. WK advised Miller that the funds from the existing first mortgage were used by him to finance his real estate development project in California. Due to cost overruns on the development project, the first mortgage went into arrears. He was seeking new financing to pay out the existing mortgage and use the remaining funds to complete the development project.
11. Miller requested that an "Authorization & Agreement" form be signed, outlining the services to be provided by Emerald and the fee for such services. This form was only signed by WK although WK also signed on behalf of TD indicating "PA", presumably referring to "Power of Attorney". There is no evidence of any Power of Attorney in the file. Miller confirmed that no Power of Attorney was requested or obtained.
12. Miller received signed mortgage applications from both WK and TD. TD's signature on the application appears suspect since her first name is spelled incorrectly. There is no evidence in the file of any documentation verifying the identity and signature of either WK or TD. Miller confirmed that no such documentation was requested or obtained from either WK or TD.
13. Miller stated that it was his understanding from his discussions with WK that although the property was registered solely in TD's name, it was beneficially owned by WK. Miller stated that he did not make any attempts to verify that this information was correct.

14. Miller obtained a credit bureau report on both WK and TD. WK's credit bureau report shows a beacon score of 445 and contains a notation of "serious delinquency and public record or collection filed"; both are significant indicators of poor credit history.
15. During his attempts to arrange a new first mortgage on the property, Miller communicated solely with WK. At no time did Miller discuss the mortgage financing with TD.
16. The Form 10 Borrower Conflict of Interest Disclosure Statement was only signed and acknowledged by WK. There is no evidence that this disclosure was provided to TD.
17. The Cost of Credit Disclosure Statement was only signed and acknowledged by WK. There is no evidence that this disclosure was provided to TD.
18. The first mortgage financing arranged by Emerald proceeded and the funds were advanced in September 2009. From the mortgage proceeds, Emerald collected the \$10,000 fee charged to the borrowers for arranging the transaction.
19. Based on the above facts, Staff had concerns about the level of knowledge that TD had about the mortgage arranged against the property registered in her name. Miller was contacted by telephone and these concerns were brought to his attention. Miller stated that although he had never discussed the mortgage transaction with TD, he had met with her briefly on the day that she signed the mortgage documents at the lawyer's office. Miller stated he had no reason to believe that the person he met was not TD or that she was not fully aware of the mortgage transaction even though he had not discussed it with her.
20. Miller also advised during that telephone conversation that he was now in the process of arranging a second mortgage on the property as well. When asked whether he had received an application from the borrower for second mortgage financing he stated that it was unnecessary to do since he was relying on the information in the initial application and "nothing had changed".
21. On that day Staff sent an email to Miller requesting that he ensure that the following information/documentation be obtained for the second mortgage transaction:
  - Verification of client identity for both WK and TD;
  - "Authorization & Agreement" form signed by both clients;
  - Application form(s) signed by both clients;

- Form 10 Borrower Conflict of Interest Disclosure Statement signed by both clients; and
  - Cost of Credit Disclosure Statement signed by both clients.
22. At no time did Miller recommend that TD obtain independent legal advice. However, as a condition of financing, the lender on the first mortgage required that TD obtain independent legal advice. Staff requested that Miller obtain a copy of the Certificate of Independent Legal Advice signed by TD. Miller subsequently provided a copy of the signed certificate.
23. Miller stated that he would attend TD's home and obtain documentation from her verifying her identity and signature. However, Miller later advised that he did not meet with TD as planned. He was provided with copies of TD's identification by WK. WK faxed him copies of TD's Certificate of Canadian Citizenship, Social Insurance Number card and BC Driver's Licence. Miller provided copies of these documents to Staff.
24. Miller subsequently advised Staff that Emerald had successfully arranged a second mortgage on the property and that the mortgage documents were in the process of being signed and executed by the borrowers. Miller provided copies of the following documents relating to the second mortgage:
- Commitment letter from the lender signed by WK and TD;
  - Form 10 Borrower Conflict of Interest Disclosure Statement signed by WK and TD; and
  - Cost of Credit Disclosure Statement signed by WK and TD.

Miller stated; however, that none of these documents were signed by the clients in his presence. In addition, although they were specifically requested in Staff's email to Miller, copies of a signed application form and a signed "Authorization & Agreement" form for the second mortgage financing were not provided.

25. Upon examination of the various documents which contain TD's signature, it is evident that some of the signatures vary significantly from others. In particular, it appears that TD's signatures on documents such as the mortgage application, disclosure forms and commitment letters are different than those on her personal identification documents. Miller did not question any of these apparent discrepancies even though they were brought to his attention.

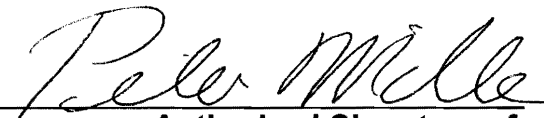
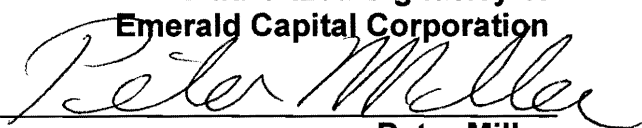
### C. ADMISSIONS AND WAIVER

1. Miller and Emerald acknowledge that based on the findings of the examination, its mortgage broker activities are not in compliance with the requirements of the

Act and its regulations, the Business Practices and Consumer Protection Act ("BPCPA"), the Disclosure of the Cost of Consumer Credit Regulation, and the policies and Bulletins published by the Registrar of Mortgage Brokers.

2. Miller acknowledges that he failed to ensure that reasonable due diligence was exercised in arranging the first mortgage on the WK/TD transaction.
3. Miller acknowledges that he failed to ensure that reasonable due diligence was exercised in arranging the second mortgage on the WK/TD transaction despite the fact that Staff brought certain concerns to his attention and requested that specific information/documentation for the transaction be obtained.
4. Miller acknowledges that by failing to ensure that reasonable due diligence was exercised he conducted business in a manner prejudicial to the public interest.
5. Emerald and Miller acknowledge that they have had an opportunity to seek independent legal advice prior to signing this order, and have either sought independent legal advice or waive their right to seek independent legal advice.
6. Emerald and Miller waive their right to a hearing under section 8(1) the Act and waive their right to an appeal under section 9 of the Act.

Dated at Surrey, BC, this 15<sup>th</sup> day of January, 2010.

  
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**Authorized Signatory of  
Emerald Capital Corporation**  
  
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**Peter Miller**

Dated at Surrey, Province of British Columbia, this 15<sup>th</sup> day of January, 2010.

  
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**W. Alan Clark**

**Registrar of Mortgage Brokers,  
Province of British Columbia**