THE LAW SOCIETY OF ALBERTA

IN THE MATTER OF A RESIGNATION APPLICATION PURSUANT TO SECTION 32 OF THE *LEGAL PROFESSION ACT* R.S.A. 2000 C.L-8 BY PAUL WOZNIAK

Resignation Committee

Date of Resignation Hearing:	**May 7, 2014**	
Location:	**Calgary, Alberta**	
Committee	**Chair:**	**Kathleen A. Ryan, QC**
	Member:	**Robert Harvie, QC**
	Member:	**Wayne Jacques, CA**
Counsel Appearances:	**Gregory Sim, for the Law Society of Alberta**	

REPORT OF THE RESIGNATION COMMITTEE

1. Paul Wozniak ("Wozniak") applies for Resignation pursuant to Section 32, or in the alternative Section 61 of the *Legal Profession Act* R.S.A. 2000 c.L-8 ("LPA"). Because Mr. Wozniak's conduct is already the subject of formal review under Section 53 of the LPA, the Resignation Committee (the "Committee") was constituted to hear this Application. Wozniak was present at the hearing and self-represented. There was no objection to the constitution of the Committee.

2. At the conclusion of the hearing, the Committee allowed the Application pursuant to Section 32 of the LPA. These written reasons accompany the oral decision provided at the hearing.

BACKGROUND

3. Wozniak was admitted to the Bar in 1986. He practiced continuously in the City of Calgary for over 27 years. In those 27 years, Wozniak had no disciplinary record.

4. Wozniak faces the following citations referred to hearing by a Conduct Committee Panel:

   (a) “It is alleged that you engaged in conduct that enabled others to achieve an improper purpose and that such conduct is deserving of sanction;

   (b) It is alleged that you deliberately or recklessly engaged in conduct to deceive the lenders and that such conduct is deserving of sanction;

(c) It is alleged that you engaged in conduct that placed you in a conflict of interest and that such conduct is deserving of sanction."

5. The Law Society and Wozniak agreed to a Statement of Facts. The Statement of Facts was tendered as an exhibit at the hearing. That Statement of Facts is appended to and forms part of this decision. The conduct agreed to by Wozniak demonstrates conduct worthy of sanction. If the allegations of the complainant were established, the conduct may well result in disbarment. If the Law Society were forced to a full hearing, the Law Society would have sought disbarment.

6. It is not necessary go to through the appended Agreed Facts. The Agreed Facts are in a format acceptable to this Committee and the Agreed Facts are accepted as evidence.

7. By way of summary, the allegations arise out of complaints by certain financial institutions. Between 1999 and 2002, Wozniak accepted retainers on real estate matters where his clients were both purchasers and lenders in the same transactions respecting various condominium developments. It is not an uncommon practice in Alberta for a lawyer to act on behalf of both purchaser and lender. And skip transfers can also occur in the usual course. However, multiple representation can present a conflict of interest and, accordingly, lawyers must be vigilant to ensure that no client is prejudiced as result of the lawyer representing multiple parties in a real estate transaction.

8. In the Purchase Agreements in issue, transfers of each unit were accomplished through a skip transfer. These transfers concealed the true vendors' identity and true consideration. The true consideration for the condominiums was not fully disclosed and was markedly higher than the earlier transaction. Further, in many cases, the down payment was not actually made and the purchaser was paid a fee out of the mortgage proceeds advanced to allow the purchaser's name to be used as a straw man, thereby providing credibility to the transaction. These transactions had the hallmarks of mortgage fraud.

9. While Wozniak claims that he was doing nothing out of the ordinary, this Committee considers the conduct demonstrated in the Agreed Statement of Facts is clearly worthy of serious sanction.

10. This set of facts has become all too familiar in Law Society resignation and conduct hearings.

11. Ultimately, the condominium development went into foreclosure and the lenders were left in a very significant shortfall position as a direct result of the manner in which the transactions were undertaken.

12. The timing in this case, circa 1999 marked a time when most lenders and lawyers were unaware of the prevalence of unscrupulous developers who desired an illegitimate profit in the booming Alberta real estate market. The Law Society admits in the Agreed Facts that "Wozniak believed … that he acted in accordance with the standards of a prudent Alberta real estate lawyer."

13. Although the conduct giving rise to this matter happened as early as 1999, and despite ongoing litigation which did not settle until late 2005, no complaint was advanced to the Law Society in respect of Wozniak's conduct until after resolution of all civil matters. In

fact, until that point, at least one of the complainants had repeatedly stated that Wozniak's conduct was negligent only and did not involve matters of professional misconduct.

14. A complainant is open to change a position during the course of litigation and the Law Society will consider the merits of a complaint regardless of the source or motivation of the complaint. However, the effect of the delay in complaints here has resulted in up to a 15-year delay between the time that the transactions giving rise to the complaint began and this Resignation Hearing. This delay is inordinate and it cannot be overcome by explanations, however reasonable. The delay has also resulted in actual prejudice to Wozniak. In particular:

    (a) Wozniak's files were destroyed after a complainant assured the Law Society that there was no professional conduct complaint and the civil proceedings were at an end;

    (b) A critical witness who the Law Society concedes would have provided very helpful evidence to Wozniak cannot be located;

    (c) Another witness with relevant evidence has sustained health issues which would render him unfit to provide evidence at any hearing;

    (d) Another relevant witness has died in the intervening time frame.

15. Although much of the Wozniak file was copied and available as a result of civil proceedings, the remainder of the prejudice above is incurable prejudice. The Law Society recognizes that such prejudice can impact sanction and reduce what would otherwise be an appropriate sanction for misconduct.

SHOULD WOZNIAK BE ALLOWED TO RESIGN?

16. The Law Society is entitled to oppose the resignation application and instead contend that Wozniak should face a full hearing. Likewise, Wozniak is entitled to a hearing and no one is forcing Wozniak to resign in the face of potential discipline.

17. The prospect of resignation in lieu of hearing often leaves the public with questions as to whether a lawyer's misconduct has been adequately addressed.

18. The most serious sanction available to a Conduct Hearing Committee is disbarment. In this case, Wozniak has undertaken to never re-apply to become a member of the Law Society again. As a result, this resignation achieves the identical outcome that the most serious consequence after hearing could create.

19. That is not to say that in every case risking serious discipline a lawyer should be allowed to resign. Many circumstances may require such hearing to fully proceed. However, this is not such a case for the reasons set out below.

20. The Law Society and Wozniak submitted that it is in the public interest to allow this resignation to proceed.

21. We accept the submissions made by the Law Society in that regard. Included in those submissions were the following:

    (a) The Law Society's case was strong, but given the evidential issues, there was no guarantee of a certain outcome; the Law Society could not be certain it would be able to prove the citations on the balance of probabilities;

    (b) This resignation creates a final solution and prevents any additional delay in bringing finality and closure to the case;

    (c) When delay is inordinate and prejudicial, there can be a reduced sanction;

    (d) Nine or ten witnesses would have been called in a Conduct Hearing. A resignation on the part of the member spares all of those witnesses the inconvenience of coming to testify and reliving the circumstances giving rise to the complaint.

    (e) There are efficiencies and economies obtained in achieving finality to this case without the necessity of a two-week hearing. This is in the public interest.

SECTION 61 v. SECTION 32 RESIGNATION

22. A resignation under Section 61 of the LPA is a deemed disbarment [Section 1(c), LPA]. A resignation under Section 32 of the LPA is not a deemed disbarment. A Section 61 resignation accordingly carries significantly more stigma than does a s. 32 resignation.

23. Wozniak continued to dispute whether the Agreed Facts were in fact misconduct. We are of the unanimous view that if the facts as described were proven before a Hearing Committee, the finding would be one of misconduct. The Committee further unanimously agrees that the conduct, if proven, would be deserving of very serious sanction.

24. However, given the evidence challenges, the inordinate delay, and the unblemished record of a 27-year senior Alberta practitioner, it is not clear that a full hearing outcome would have inevitably resulted in disbarment.

25. To the contrary, Law Society counsel was extremely candid, and rightly so, about the evidentiary challenges facing the Law Society as a result of the extreme delay both in the timing of the initial complaint as well as the necessary steps taken to investigate on the file and proceed with this complaint to hearing. At no time did the Law Society suggest that there was fault on the part of Wozniak for the delay other than the fact that Wozniak destroyed his files at a time when he understood the matters were at a full conclusion. In so much as the files had been copied and provided to Alberta Lawyers Insurance Association ("ALIA") counsel, that was likely not a factor in the delay in any event.

26. As stated above, the outcome achieved by this resignation is the same regardless of the section of the LPA under which Wozniak resigns. Wozniak will no longer practice law.

SUBMISSIONS OF THE LAW SOCIETY OF ALBERTA (LSA)

27. The LSA submitted that a Section 61 resignation should be preferred as opposed to a Section 32 resignation.

28. The LSA admitted that there was significant stigma that attached to a Section 61 resignation because it has the effect of a deemed disbarment. However, LSA counsel contended, undue weight must not be placed on this stigma because, otherwise, there would be no ability to resign pursuant to Section 61 as stigma will always, to a certain extent, impact the lawyer.

29. Second, the LSA submitted that Wozniak was already the subject of civil proceedings, which were a matter of public record. They contend the horse is out of the barn, as it were.

30. The Law Society readily admitted that there were no findings against the member in civil proceedings, but Wozniak accepted facts that at least implied serious misconduct.

31. Wozniak was aware that skip transfers were being used to create these transactions, that Promissory Notes instead of down payments were being used to provide security for the transaction, and that multiple mortgages were being obtained by the same individual in respect of these developments. Wozniak was further aware that he did not tell his lender clients about this and instead considered that they would be on their own to determine this information.

32. As such, the LSA submitted that the conduct was serious and that some stigma is justified and necessary. The LSA contended that in most cases involving a Section 32 resignation, there was some reason to justify it as opposed to a Section 61 resignation, such as illness or disability of the member. The LSA admitted, however, that the delay in this case may well be inordinate.

33. The LSA's obligation is to protect the public by proper handling of such cases. As such, the LSA submits that a Section 61 resignation is an appropriate outcome.

SUBMISSIONS OF PAUL WOZNIAK

34. Wozniak conceded that the allegations were serious. However, on his own behalf, he noted the following:

    (a) The complaints arose for matters that were as old as 12 to 15 years;

    (b) The investors were sophisticated;

    (c) The appraisals were all completed independently;

    (d) The brokers were sophisticated;

    (e) The lenders were eager;

(f) At no time did Wozniak have any ill will toward any of his clients or parties and believed throughout that the steps he was taking were proper;

(g) Wozniak contends he fully complied with mortgage instructions.

35. Further, Wozniak noted that he had sold his practice to another member of the Law Society and that a Section 61 resignation could impact the other member and, by extension, Wozniak's clients and former clients.

36. This resignation avoids significant costs for the Law Society of Alberta.

37. The civil matter was an issue that Wozniak dealt with for several years, but no suggestion of misconduct was ever made while the civil litigation was extant. Only after civil proceedings were concluded did the spectre of professional misconduct arise. As a result, several years had passed since the original circumstances arose, and then an additional nine years passed following the filing of the complaints.

38. All of this has taken a serious personal toll on Wozniak and has left him practicing under a cloud of stress and uncertainty.

39. The Law Society readily concedes that Wozniak was completely cooperative throughout the course of both civil and conduct proceedings.

40. Wozniak has never been the subject of discipline in the entirety of his career other than these circumstances.

41. Wozniak submits that the impact of this resignation means that the public and the profession are "losing one of the good guys".

42. The resignation creates a very serious financial penalty. Statements at the hearing, though unverified by evidence, suggested that the financial cost may result in literally millions lost to Wozniak in income.

43. Further, Wozniak signed an undertaking to the Law Society as follows:

(a) Wozniak will cooperate with the Law Society of Alberta in the future in respect of any claim made against Wozniak or the Assurance Fund.

(b) Subject to proper and available defences to such claims made against Wozniak, Wozniak will pay to the Law Society of Alberta, on its demand, any amount of any claim paid on Wozniak's behalf by the Law Society's Assurance Fund, or any deductible with respect to any claim paid on Wozniak's behalf by the Law Society's insurer.

(c) Wozniak will attempt to locate and if available surrender to the Law Society of Alberta the Certificate of Enrolment issued by the Law Society pertaining to Wozniak's admission to the Bar, or Wozniak will provide a Statutory Declaration that it cannot be located.

(d) Wozniak will not act as an agent as contemplated by Section 106(2)(l) of the *Legal Profession Act*.

(e) Wozniak will not reapply to become a member of the Law Society of Alberta.

DISCUSSION AND REASONS

44. One issue to be determined by this Committee is whether it is in the best interests of the public to permit Wozniak to resign prior to the resolution of Wozniak's pending conduct matters. For the reasons set out above and the submissions of the Law Society, the Committee is of the unanimous view that it is in the best interest to allow Wozniak to resign prior to the resolution of his conduct matters.

45. The purpose of the Law Society's conduct process is to protect the public and to deter a member from engaging in improper conduct in the future, to deter other members from misconduct, and to demonstrate to the public that the Law Society of Alberta is responding to conduct matters and dealing with them properly.

46. Notwithstanding these objections, it is neither necessary nor in the public interest that the Wozniak complaints receive a full hearing. This is particularly so where Wozniak has ceased to practice altogether.

47. The consequence of Wozniak's resignation, whether it is under Section 61 or Section 32 means that the public will be forever protected. This lawyer will never again practice law.

48. The public can take confidence knowing that this conduct from this lawyer will never happen again.

49. Further, it is noteworthy that after the initial sequence of transactions, Wozniak practiced for an additional 12 years without any question of misconduct or any disciplinary proceedings.

50. It is also meaningful that both the Law Society and Wozniak agreed that Wozniak believed that he was acting prudently. While for some that may raise the question of wilful blindness, it was nevertheless an agreed fact in these proceedings.

51. The remaining question then for the Resignation Committee is whether Wozniak should be permitted to resign under Section 32 or Section 61 of the LPA.

52. The Committee has unanimously concluded that the public interest is served in this case by accepting a resignation under Section 32 of the LPA.

53. The evidence in this case is important.

54. The conduct that is the subject matter of complaint was extremely serious and, had the matters been proven after a full hearing, no doubt would have resulted in substantial sanction. It may be that, if all the evidence had been brought forward in a timely way, and the hearing proceed in a timely fashion, disbarment would have been the outcome.

55. But this matter did not proceed in a timely fashion. The initial complaint itself was brought several years after a sophisticated complainant knew the circumstances and only once the civil matter was resolved.

56. Wozniak, through his civil counsel, repeatedly inquired of the complainants whether the complainants wished to bring forward an allegation of misconduct. Such an allegation of misconduct may have created a situation where the case proceeded under the Assurance Fund rather than in the ordinary fashion through the civil process.

57. The complainants are entitled to withhold their complaint if they so choose; there is no statute of limitations that exists regarding complaints against lawyers. However, the consequence of that delay has created a situation, which, together with the ensuing systemic delay, has resulted in prejudice. Witnesses have died, are ill, or cannot be found.

58. The loss of relevant evidence is prejudicial to Wozniak. The timing of these complaints, it appears, was calculated.

59. As a result of this, it is not at all clear that, had this matter proceeded to hearing, the Law Society would have been able to establish the evidence, which Wozniak now, in part, concedes for the purposes of this hearing.

60. Critical to our consideration is the fact that Wozniak had no disciplinary record in his 27 years of practice. This is in an enviable record.

61. Wozniak was cooperative with the Law Society throughout the course of these proceedings, a point readily conceded by Law Society counsel.

62. Wozniak is paying a substantial penalty. The loss of one's ability to practice law, the only career that Wozniak has known for 27 years, is a substantial penalty and a significant deterrent to others.

63. Although Wozniak did not suffer the ultimate penalty of disbarment or deemed disbarment under Section 61, the practical impact is the same in that he will never practice again.

64. The resignation is granted under s. 32 of the LPA.

NOTICE TO THE PROFESSION

65. Wozniak had urged on this Committee that there be no Notice to the Profession. Wozniak was aware that the Notice to the Profession is mandatory under a section 61 resignation, and within the Committee's discretion under a section 32 resignation.

66. Although Wozniak has not resigned under Section 61 of the LPA, the Committee does consider it appropriate that a Notice to the Profession be issued. The profession should be alive to the consequences of such conduct and the public can witness that the outcome of such conduct will result in extremely serious consequences.

67. The Notice to Profession shall be in a form to be determined by the Executive Director.

68. Exhibit 2 and Exhibits 6(a) through 6(d) shall be made available to the public for inspection or copying along with the decision herein.

69. The undertaking set out at Exhibit 6(c) and the Agreed Statement of Facts at Exhibit 6(b), which is appended hereto, are in a form acceptable to this Committee.

70. Costs were agreed by the parties in the amount of $43,362.50, payable only in the event of Wozniak's application for reinstatement. In the event of an application for reinstatement, those costs will be paid at the time of the application.

71. Wozniak's practice was being transferred at the time of hearing and the transfer was to be concluded by August 31, 2014.

72. In so much as Wozniak's practice was highly transactional and busy during the summer months, in order to protect Wozniak's clients, all of whom are members of the public, it was appropriate that Wozniak be available to consult with and supervise the transfer of his practice and accordingly this resignation was effective August 31, 2014.

73. The Roll shall show that Wozniak's resignation was effective August 31, 2014. The Notice to the Profession will be attached to the Roll.

74. Law Society counsel sought no referral and this Committee finds that no referral to the Attorney General is required.

Dated at Edmonton, Alberta, this 18th day of September, 2014.

Kathleen A. Ryan, QC, Bencher & Chair
Resignation Committee – Law Society of Alberta

Robert Harvie, QC, Bencher
Resignation Committee – Law Society of Alberta

Wayne Jacques, CA, Lay Bencher
Resignation Committee – Law Society of Alberta

TO: The Executive Director
The Law Society of Alberta

TO: Paul Wozniak

IN THE MATTER OF THE LEGAL PROFESSION ACT

AND IN THE MATTER OF A RESIGNATION APPLICATION BY MEMBER PAUL WOZNIAK, A MEMBER OF THE LAW SOCIETY OF ALBERTA

STATEMENT OF FACTS

INTRODUCTION

1. Paul Wozniak ("Wozniak") is a member of the Law Society of Alberta, admitted to membership on November 7, 1986. He has practiced in the City of Calgary since that date.

2. Since Wozniak began practicing law as a member of the Law Society of Alberta in 1986 he has never been found guilty of misconduct.

3. Wozniak faces the following Citations referred to hearing by a panel of the Conduct Committee on March 16, 2012:

    i. It is alleged that you engaged in conduct that enabled others to achieve an improper purpose and that such conduct is conduct deserving of sanction;

    ii. It is alleged that you deliberately or reckless engaged in conduct to deceive the lenders and that such conduct is conduct deserving of sanction;

    iii. It is alleged that you engaged in conduct that placed you in a conflict of interest and that such conduct is conduct deserving of sanction.

THE COMPLAINT

4. By letters dated December 8th, 2005 and January 19th, 2006, Bank A filed a complaint against Wozniak with the Law Society of Alberta (the "Complaint").

5. Bank A's complaint alleged that Wozniak committed conduct deserving of sanction in respect of condominium projects, including projects known as Project A located in Edmonton, Alberta and Project B located in Edmonton, Alberta.

6. Wozniak provided legal work in relation to Projects A and B intermittently between 1999 and 2002.

7. In relation to Project A and B, D.M., or corporations he controlled, purchased the Project A and B developments in their entirety and then sold the individual condominium units to investors (the "Investors"). Wozniak acted for the Investors and their mortgage lenders for Project A and B.

8. After receiving a copy of Bank A's first complaint letter dated December 8, 2005, Wozniak sought clarification through his ALIA counsel, A.K. about the nature of Bank A's complaint. Bank A then issued its second complaint letter dated January 19th, 2006. Bank A provided details of its complaint using Investor P. as an example. Bank A clarified it was not suggesting Wozniak had defrauded Bank A. Bank A complained:

> "Bank A's complaint is that it relied upon Mr. Wozniak to protect its interests and to provide informed, independent and competent advice and to implement Bank A's instructions free from compromising influences, all of which he failed to do. Specifically, Mr. Wozniak failed to advise or warn Bank A:
>
> - That Investor P. had not made the down payment as represented
> - That the true consideration paid for each unit was significantly less than represented, and significantly less than the mortgage proceeds advanced.
> - That the transfer of each unit was accomplished through a "skip-transfer" thereby concealing the true vendor's identity and the true consideration
> - Of the existence of the various collateral agreements between the purchaser and other parties to the transaction, including the "buy-back guarantee", the "participatory promissory note" or even the brochure, all of which was in breach of the Real Estate Contract
> - That the cash to close was in the form of a "participatory promissory note" instead of cash, in breach of the Real Estate Contract
> - That Investor P. had entered into a number of other agreements to purchase units with monies borrowed from other lenders
> - That Investor P. was paid a fee of $3,000 from the mortgage proceeds advanced
> - That Investor P. was, for all purposes, merely a straw man lending his name and credit worthiness to obtain mortgages and financing on behalf of others."

9. By letter dated January 26, 2007, Bank B filed a similar complaint against Wozniak with the Law Society.

RELATED LITIGATION

10. In early 2001, approximately 4 years prior to Bank A making its Complaint, Bank A, Bank B and several other lenders commenced civil actions with respect to Projects A and B. These actions were consolidated in 2003.

11. The Defendants in the consolidated actions included, but were not limited to, Wozniak, M.L., D.M., mortgage brokers, appraisers, and the Investors. The consolidated actions alleged mortgage fraud, conspiracy and breach of contract against D.M., the mortgage brokers and the Investors. As against Wozniak and M.L. only negligence was ever alleged.

12. Wozniak denied any negligence or wrongdoing.

13. Wozniak participated in a Pierringer settlement agreement in June 2005. There has never been a finding of liability or culpability on Mr. Wozniak's part related to Project A or B. ALIA contributed towards the settlement of the matter on Wozniak's behalf on a no fault basis that fully and finally released Wozniak with respect to Projects A and B.

14. The Pierringer settlement agreement resolved the litigation as against all of the defendants in the consolidated actions save and except one Investor, G.S., who proceeded to trial resulting in a judgment rendered August 26th, 2009.

15. Only on December 8, 2005, after the Pierringer settlement agreement amongst Bank A, Bank B, Wozniak and others was concluded, did Bank A and Bank B file their complaint with the Law Society about Wozniak.

THE INVESTIGATIONS

16. On March 17, 2006, the Law Society's Director of Lawyer Conduct appointed an investigator, Donald Procyk ("Procyk") to conduct an investigation into the Complaint. On December 6, 2007, a co-investigator, Nancy Stenson, was appointed.

17. Nancy Stenson completed and issued an investigation report into the complaints of Bank A and Bank B on April 15, 2010.

DIFFICULTIES WITH THE INVESTIGATION

18. Wozniak cooperated at all times during the Bank A investigation that led to the Complaint and during the Law Society investigation into these matters. Wozniak voluntarily provided documents and information concerning his involvement.

19. Despite Wozniak's cooperation, the Law Society investigators experienced challenges in locating information about Projects A and B. In particular:

- The Bank A Complaint was received approximately 6 years after the condominium projects were initiated.
- Not all of the Investors could be located and of the Investors who were located, only a few of them cooperated by providing interviews.
- Wozniak had destroyed his files related to Projects A and B when the litigation was settled.
- The Law Society's investigators were unable to make contact with D.M..
- Records were determined to be missing in many instances.

20. Through Ms. Stenson's investigation, including the records collected during the investigation and her Investigation Report, the following information was reported:

PROJECT A DEVELOPMENT

21. M.L. met D.M. prior to his retainer for Project A when M.L. shared office space at Wozniak's law office.

22. In approximately November 2009, D.M. retained M.L. to provide legal services for Project A.

23. Wozniak was not aware of dealings by or between D.M. and M.L. at the material times except where expressly admitted herein.

24. The Project A condominium syndication was structured and occurred as follows:

- D.M. located a condominium development whose owner was willing to sell the entire development.
- XXXXXX Alberta Ltd. owned the 126 unit Project A development and agreed to sell the entire development to D.M. "and/or nominee".
- D.M. paid a fee to a Mortgage Broker to recruit financially qualified Investors to purchase multiple condominium units and to apply for residential mortgage financing to fund the purchases.
- Each investor entered into Real Estate Purchase Contracts ("REPCs") by which they agreed to buy condominium units at a certain price. These prices ranged from $96,000 to $103,000 depending on the Project A unit.
- Each of the REPCs required the Investor to buy the condominium units by way of cash deposits, new mortgage financing and down payments.
- Each of the REPCS were used by the Mortgage Broker on behalf of each Investor to apply for conventional mortgage financing on each unit.
- All of the cash deposits and down payments were covered by a "Participatory Promissory Note" from the Investors in favor of D.M. None of the investors paid any of their own money for their interests in the condominium units in Project A. The use of promissory notes in real estate transactions is not in and of itself improper.
- M.L. acted for D.M. in the purchase of the Project A development from XXXXXX Alberta Ltd. and in the sale of the individual Project A condominium units to the Investors.
- Wozniak acted for the Investors as well as for each of their mortgage lenders. Wozniak obtained the Investors' mortgage proceeds and forwarded these funds to M.L. to close the transactions. M.L. used some of these mortgage proceeds to pay XXXXXX Alberta Ltd for the purchase price of the Project A development.
- XXXXXX Alberta Ltd.'s lawyer provided "skip transfers" to M.L. as counsel for D.M. M.L. provided these transfers to Wozniak as counsel for each Investor for

the sale of the individual condo units to the Investors. The Transfers of Lands stated this was done "at the request of" D.M.'s nominee.

- Title to each condominium unit "skipped" D.M.'s nominee and was transferred from XXXXXX Alberta Ltd. directly to the individual Investor purchasing the condominium unit. The use of skip transfers in real estate transactions is not in and of itself improper.

- At the same time as, or immediately after closing the purchase of the condominium units, each Investor executed the following collateral contracts known collectively as "Buy Back Option Agreements":

    I. Buy Back Option Agreement - by which each investor could elect to sell the condominium unit back to the Vendor in exchange for an option payment ($3,000);

    II. Declaration of Trust – by which each Investor declared they would hold legal title to the condominium unit as Trustee for the vendor;

    III. Acknowledgment of Trust – by which each Investor acknowledged having executed the buy back option, that the Investor held title to the condominium unit as trustee for the benefit of the vendor or for any third party to whom title was ultimately transferred.

  Agreements to buy back interests in real estate, trust declarations and acknowledgments are not in and of themselves improper in real estate transactions.

- Upon the individual investors executing these collateral "Buy Back Option Agreements", D.M.'s nominee agreed to be responsible for all mortgage payments, costs and expenses associated with ownership of the condominium units and to cancel the Participatory Promissory Notes.

- After Project A closed, the investors executed a Transfer of Land for each condominium unit they had purchased. The identity of the Transferee was left blank.

25. Wozniak was first exposed to condominium syndications years before Project A. Wozniak was retained by CH to assist it with such a transaction. A corporation owned an apartment building that required structural repairs but it could not obtain commercial financing to fund the repairs. The corporation registered a condominium plan against the building title. It then sold the individual condominium units to its shareholders. The shareholders obtained conventional mortgage financing to purchase each unit. Wozniak acted for the shareholders purchasing the condominium units and for their mortgage lenders.

26. The mortgage proceeds were pooled and used to complete structural improvements to the building. Instead of the shareholders putting any of their own money into the purchases, they gave promissory notes to the corporation covering the amount of their deposits and down payments. The shareholders also entered into Buy Back Option Agreements. These included an agreement by which the corporation would buy the

condominium units back in exchange for the amount of the outstanding mortgage, and trust agreements whereby the shareholders held title to the condominium units in trust for the corporation. This was to avoid tax upon the corporation buying the condominium units back from its shareholders.

27. Through his involvement in this syndication transaction, Wozniak obtained copies of the promissory note and the Buy Back Option Agreements. Later, when D.M. told Wozniak he was contemplating a similar condominium syndication as an investment vehicle, Wozniak said that he was experienced and that he could act for the Investors. Wozniak provided D.M. with precedent copies of the promissory note and the Buy Back Option Agreements that were used on Project A and later Project B.

28. From the outset, Wozniak was aware that Project A would be a condominium syndication. He understood the intention was to obtain mortgage proceeds, and possibly additional funds from Investors, to finance the acquisition of the development, complete improvements and sell each unit to third party purchasers for a profit.

29. Wozniak was aware that "Participatory Promissory Notes" would be put in place instead of the Investors contributing cash from their own resources at the time of closing. He also understood that Buy Back Option Agreements would be used based on the precedents he obtained from CH.

30. On January 24th, 2000, M.L. forwarded 126 Transfers of Land to Wozniak, who was acting for the Investors of Project A. The Transfers of Land provided to Wozniak were duly executed but in blank form. M.L. imposed trust conditions on Wozniak, including that:

> ….prior to the use of the enclosed Transfers you complete the description of the Transferees. Please show the name of the Transferee at the request of [D.M.'s nominee].

31. Together with his January 24th, 2000 trust letter to Wozniak, M.L. enclosed 126 Statements of Adjustments for the Project A condominium unit sales.

32. Each Statement of Adjustments reflected a $2,000.00 cash deposit as a credit to the Investor purchasing the condominium unit, an amount of new mortgage financing and a further amount owing, described as the "down payment", ranging from $33,075 to $39,200, depending on the condominium unit.

33. M.L. never received the $2,000.00 cash deposits into his trust account. M.L. relied on D.M.'s advice that the $2,000.00 deposits had been paid directly to D.M.'s nominee. This was not disclosed to Wozniak who understood the deposits were paid.

34. Between February 8th and 11th, 2000, Wozniak received individual mortgage advances totalling $8,529,100.00 from various lenders in relation to his Investor clients' purchases of the Project A condominium units. Wozniak did not obtain any funds from his Investor clients for the down payments.

35. The down payments were covered by the Participatory Promissory Notes. Wozniak understood that pursuant to these promissory notes, D.M.'s nominee might ask for all, some or none of the down payment money from the Investors to be paid after closing,

after it was determined the likely cost of renovating the building and whether the down payment money would be required. In the case of Project A, none of the down payment money was ever demanded from any of the Investors.

36. In accordance with each Statement of Adjustments, Wozniak sent mortgage proceeds for the purchases of the Project A condominium units by the Investors to M.L. In total, Wozniak sent $8,246,199.00 to M.L.

37. Although Wozniak was not privy to D.M.'s purchase of Project A, it is now known that the funds that M.L. used to close the purchase of Project A were proceeds of selling the individual condominium units to the Investors. These funds consisted only of mortgage proceeds. On February 9th, 2000, M.L. paid $4,681,573.00 from his trust account to close the purchase of the entire Project A development.

38. Wozniak had provided suggestions to D.M. for the names of lawyers in South Calgary to receive the signed Buy Back Option Agreements and if Investors exercised the Buy Back Option, to distribute Buy Back Option funds to the Investors. D.M. selected F.M. of MMG, who assisted with this task in Project A and later in B.

39. After the Investors' purchases of the Project A condo units had closed, independently of Wozniak all of them executed the Buy Back Option Agreements. The Investors were paid a $3,000 Buy Back Option payment for each unit they had purchased. In total $378,000 was disbursed by M.L. and McConnell to investors in Buy Back Option payments on Project A.

40. Wozniak was aware that each Investor had the Buy Back Option but he was not involved in the execution or collection of the Buy Back Option Agreements or disbursing the Buy Back Option funds.

41. When the Project A Investors exercised their Buy Back Options their Participatory Promissory Notes were cancelled and their contractual obligations to pay any portion of the down payments were extinguished.

42. Wozniak was acting for both the Investors and their mortgage lenders. Wozniak took no steps to inform the lenders of the use of skip transfers to transfer the condominium unit titles to the Investors. Wozniak assumed, but took no steps to verify that his Lender clients received this information from the Mortgage Broker or the Investors.

43. The REPCs provided that the Purchase Price, including the down payment, would be paid on the Completion Date. Wozniak took no steps to inform his lender client of the use of the Participatory Promissory Notes or that the down payments might never be paid by the Investors. Wozniak assumed, but took no steps to verify that his Lender clients received this information from the Mortgage Broker or the Investors.

44. Wozniak commissioned Statutory Declarations and Affidavits of certain Investors that some of his Lender clients required as part of the mortgage documentation. These documents contained statements, including:

    i. That the down payment came from the Investor's own funds and were not borrowed; and

ii. That mortgage funds would not be used to finance improvements to the condominiums.

45. The Real Estate Purchase Contracts provided that as between the vendor and purchaser there were no collateral contracts. Wozniak took no steps to inform his lender clients that Buy Back Option Agreements could be involved or that $3,000 per unit option payments could be made to Investors from the excess mortgage proceeds in M.L.'s trust account. Wozniak assumed, but took no steps to verify that his Lender clients received this information from the Mortgage Broker or the Investors.

46. Wozniak was aware that the Investors were each buying multiple condominium units in Project A and obtaining mortgages from multiple lender clients. Wozniak took no steps to inform his lender clients that the Investors applying for mortgages were simultaneously purchasing other condo units using other financing. Wozniak assumed, but took no steps to verify that his Lender clients received this information from the Mortgage Broker or the Investors.

47. Wozniak believed that condominium syndications as described above were commonplace and that he acted in accordance with the standards of a prudent Alberta real estate lawyer at that time. Wozniak was aware that he had not informed his lender clients about all of these matters but he believed he had no duty to inform them. Wozniak believed that he had complied with his professional duties by reporting the matters required by his lender client's express mortgage instructions.

PROJECT B DEVELOPMENT

48. In approximately June of 2000, D.M. retained M.L. for another condominium syndication project, Project B. Project B comprised of 178 condominium units. Initially, only 162 of the units were sold to Investors. The remaining 16 units were sold to Investors at a later time.

49. As he had done in Project A, Wozniak acted for the Project B Investors and their mortgage lenders.

50. Wozniak was not aware of dealings by or between D.M. and M.L. at the material times except where expressly admitted herein.

51. The Project B transactions were structured and occurred as follows:

- Acting through V. Ltd., D.M. located a condominium development whose owner was willing to sell the entire development and to schedule closing so that financing could be arranged.

- H. Inc. owned the 178 unit Project B development and agreed to sell the entire development to V. Ltd. or its "nominee", and to schedule closing so that financing could be arranged.

- D.M. then paid a fee to a mortgage broker to recruit financially qualified Investors to purchase multiple condominium units in Project B and to apply for mortgage financing.

- Each investor entered into REPCs by which they agreed to buy condominium units in Project B.

- Each of the REPCs required the Investor to buy the condominium units by way of cash deposits, new mortgage financing and down payments.

- All of the cash deposits and the balance of the purchase price were covered by a "Participatory Promissory Note" from the investors in favor of V. Ltd. None of the Investors paid any of their own money for their interests in the Project B condominium units. The use of promissory notes in real estate transactions is not in and of itself improper.

- M.L. acted for V. Ltd. and on D.M.'s instructions for the purchase of the Project B development and then the sale of Project B condominium units to Investors.

- Wozniak acted for the individual Investors in relation to Project B as well as for each of their mortgage lenders. Wozniak obtained the Investors mortgage proceeds and forwarded those funds to M.L. to close the transactions. M.L. then used these proceeds to pay H. Inc. to close V. Ltd.'s purchase of the Project B development.

- Skip transfers were used to transfer the unit titles from H. Inc. to the individual investors, skipping over V. Ltd. H. Inc.'s lawyer prepared the skip transfers and forwarded them to M.L. The skip transfers recorded that the transfers were done "at the request of [V. Ltd.]". The use of skip transfers in real estate transactions is not in and of itself improper.

- At the time of, or after closing the purchase of the condominium units, each Investor executed collateral contracts known as "Buy Back Option Agreements":

    I. Buy Back Option Agreement - by which each investor could elect to sell the condominium unit back to the Vendor in exchange for an Option payment ($3,000);

    II. Declaration of Trust - by which each investor declared that they held legal title to the condominium unit as trustee for the vendor.

    III. Acknowledgment of Trust - by which each investor acknowledged having executed the buy back option, that the investor held title to the condo unit as trustee for the benefit of the vendor or for any third party to whom title was ultimately transferred.

  Agreements to buy back interests in real estate, trust declarations and acknowledgments are not in and of themselves improper in real estate transactions.

- Upon executing these collateral Buy Back Option Agreements, V. Ltd. agreed to take responsibility for all mortgage payments, costs and expenses associated with the ownership of the condominium units and to cancel the Participatory Promissory Notes.

- The investors also executed Transfers of Land for each Project B condo unit they had purchased. The identity of the Transferee was left blank so that the Transfers could ultimately be used by the Vendor to transfer the condo units to the new Purchaser.

52. From the outset of Project B, Wozniak understood that Project B would be a condominium syndication. He understood the intention was to obtain mortgage proceeds, and possibly additional funds from Investors, to finance the acquisition of the development, complete improvements and sell each unit to third party purchasers for a profit.

53. He understood that "Participatory Promissory Notes" would be put in place instead of the Investors contributing cash from their own resources at the time of closing. He also understood that Buy Back Option Agreements would be used based on the precedents he obtained from CH and had been used for Project A.

54. On July 24th, 2000, M.L. forwarded 162 completed Transfers of Land and Affidavits of Value to Wozniak, who was acting for the Investors. The Transfers each identified an Investor as Transferee "at the request of V. Ltd."

55. Together with his July 24th, 2000, trust letter to Wozniak, M.L. enclosed 162 Statements of Adjustments for the Project B condominium units. Each Statement of Adjustments reflected a $2,000.00 deposit as a credit to the Investor purchasing the condo unit, an amount of new mortgage financing as well as "other consideration" ranging from $30,000.00 to $35,000.00 depending on the condominium unit.

56. M.L. never received the $2,000.00 deposits for any of the Project B condo units. M.L. relied on D.M.'s advice that the $2,000.00 had been paid directly to V. Ltd. and that there would be no adjustments for rent or security deposits as V. Ltd. would continue to manage the property. This was not disclosed to Wozniak who understood the deposits had been paid.

57. Between August 1st, 2000 and February 28, 2001, Wozniak received individual mortgage advances totalling $11,881,026.36 from lenders for the Project B Investors. Wozniak did not obtain any funds from his Investor clients for the "other consideration" in the Statements of Adjustments.

58. The "other consideration" was covered by the Participatory Promissory Notes. Wozniak understood that pursuant to these promissory notes, V. Ltd. might ask for all, some or none of the "other consideration" from the Investors to be paid after closing after V. Ltd. had determined the likely costs of renovating the building and whether the "other consideration" money would be required. In the case of Project B, none of the "other consideration" was ever demanded from any of the Investors.

59. In accordance with each Statement of Adjustments Wozniak sent mortgage proceeds for the purchases of the Project B condominium units to M.L. On August 1st, 2000,

Wozniak sent $6,500,000.00 in mortgage proceeds to close the sale of 162 of the Project B condo units.

60. Although Wozniak was not privy to V. Ltd.'s purchase of Project B, it is now known that the funds that M.L. used to close V. Ltd.'s purchase of Project B were proceeds of selling the individual condominium units to Investors. These funds consisted only of mortgage proceeds. On August 1, 2000 M.L. paid $6,232,501.20 from his trust account to counsel for H. Inc. in relation to the purchase of the Project B development.

61. Between August 2nd, 2000 and February 28th, 2001, Wozniak sent further mortgage proceeds for the Investors' purchases of the Project B condo units in the amount of $5,254,651.00. In total Wozniak sent mortgage proceeds of $11,754,651.34 to M.L. for Project B.

62. After the Investors' purchases of the Project B condo units had closed, independently of Wozniak all of them executed the Buy Back Option Agreements. The Investors were paid a $3,000 Buy Back Option payment for each unit they had purchased. In total $447,000 was disbursed by M.L. and F.M. for Investors in Buy Back Option payments on Project B.

63. Wozniak was aware that each Investor had the Buy Back Option but he was not involved in the execution or collection of the Buy Back Option Agreements or disbursing the Buy Back Option funds.

64. Pursuant to the Buy Back Option Agreements, when the Project B Investors exercised their Buy Back Options their Participatory Promissory Notes were cancelled and their contractual obligations to pay any portion of the down payments were extinguished.

65. Wozniak was acting for both the Investors and their mortgage lenders. Wozniak took no steps to inform the lenders of the use of skip transfers to transfer the condominium unit titles to Investors. Wozniak assumed, but took no steps to verify that his Lender clients received this information from the Mortgage Broker or the Investors.

66. The REPCs provided that the Purchase Price, including the "other consideration" would be paid on the Completion Date. Wozniak took no steps to inform his lender clients of the use of the Participatory Promissory Notes in lieu of cash down payments or that the "other consideration" might never be paid by the Investors. Wozniak assumed, but took no steps to verify that his Lender clients received this information from the Mortgage Broker or the Investors.

67. Wozniak commissioned Statutory Declarations and Affidavits of certain Investors that some of his lender clients required as part of the mortgage documentation. These documents contained statements, including:

    i. That the down payment came from the Investor's own funds and were not borrowed; and

    ii. That mortgage funds would not be used to finance improvements to the condominiums.

68. The REPCs provided that as between the vendor and purchaser there were no collateral contracts. Wozniak took no steps to inform his lender clients that Buy Back Option Agreements could be involved or that the $3,000 per unit option payments could be made to Investors from the excess mortgage proceeds in M.L.'s trust account. Wozniak assumed, but took no steps to verify that his Lender clients received this information from the Mortgage Broker or the Investors.

69. Wozniak was aware that the Investors were each buying multiple condominium units in Project B and obtaining mortgages from multiple lender clients. Wozniak took no steps to inform his lender clients that the Investors applying for mortgages were simultaneously purchasing other condo units using other financing. Wozniak assumed, but took no steps to verify that his Lender clients received this information from the Mortgage Broker or the Investors.

70. Wozniak believed that condominium syndications as described above were commonplace and that he acted in accordance with the standards of a prudent Alberta real estate lawyer at that time. Wozniak was aware that he had not informed his lender clients about all of these matters but he believed he had no duty to inform them. Wozniak believed that he had complied with his professional duties by reporting the matters required by his lender client's express mortgage instructions.

ACKNOWLEDGMENT and UNDERTAKING

71. Wozniak has entered into an agreement by which another Alberta lawyer, Zachary Shlah has purchased his business and will assume his practice effective August 31, 2014. Upon Wozniak's departure from practice, all of his outstanding files will have been completed and closed, resolved or transferred to Mr. Shlah.

72. Wozniak has applied to resign as a member of the Law Society of Alberta, pursuant to s. 32 of the *Legal Profession Act*, prior to the convening of a hearing of the Citations. In the alternative, Wozniak applies to resign pursuant to s. 61 of the *Legal Profession Act*. Wozniak acknowledges that he has read s. 61 of the *Legal Profession Act* and has considered that his resignation application, if accepted under that section, is a deemed disbarment pursuant to the definition of "disbar" in section 1(c) of the *Legal Profession Act*.

73. Wozniak undertakes never to reapply for membership and never to apply for reinstatement of his membership in the Law Society of Alberta.

74. Wozniak agrees with the facts as stated herein and acknowledges that based on these facts, a Law Society Hearing Committee may find that he committed conduct deserving of sanction as alleged in some or all of the Citations at paragraph 3, above. Wozniak tenders this statement of facts to support his resignation application.

IN WITNESS WHEREOF the undersigned agrees with this Statement of Facts in its entirety this 30th day of April 2014.

Witness	Paul Wozniak