

JOSH STEIN
ATTORNEY GENERAL



**State of North Carolina
Department of Justice**

INVESTIGATIVE DEMAND

To: Professional Enterprises of Hatteras Island, Inc. d/b/a Surf or Sound Realty
c/o Lloyd C. Smith, Jr.
Pritchett & Burch, PLLC
101 Lawyers Lane
Post Office Drawer 100
Windsor, NC 27983

TAKE NOTICE: YOU ARE HEREBY REQUIRED to produce, on or before **June 18, 2020**, to the undersigned at the address below, the documents identified in this Investigative Demand.

PLEASE NOTE FURTHER that this Investigative Demand is ongoing in nature and that you should supplement your responses by delivering to the undersigned copies of responsive documents as those documents come into your possession, custody, or control, or as soon thereafter as practicable.

I. DEFINITIONS

1. **ALL** shall be construed to include the collective as well as the singular and shall mean “each,” “any,” and “every.”
2. **COMMUNICATIONS** mean and refer to any exchange of information by any means of transmissions, sending or receiving of information of any kind by or through any means including, but not limited to, verbal expression, gesture, writings, documents, language (machine, foreign, or otherwise) of any kind, computer electronics, email, SMS, MMS or other “text” messages, message on “social networking” sites (including but not limited to, Facebook, Google+, and Twitter), shared applications from cell phones, “smartphones,” netbooks and laptops, sound, radio, or video signals, telecommunication, telephone, facsimile, microfilm or by any other means. **COMMUNICATIONS** shall also include, without limitation, ALL originals and copies of inquiries, discussion, conversation, correspondence, negotiations, agreement, understandings, meetings, notices, requests, responses, demands, complaints, press, publicity, or trade releases and the like that are provided by YOU or to YOU by others.

3. **COVERED RENTAL** means a VACATION RENTAL with a scheduled rental period including one or more days between March 17, 2020 and May 15, 2020 for which YOU served as a REAL ESTATE BROKER.
4. **DOCUMENTS** means the original (or duplicate, identical copies when originals are not available), and any non-identical copies (whether different from the original because of notes made on such copies or otherwise) of writings or recordings of every kind and description whether written, mechanical, electronic or any other means, as well as phonic or visual reproductions of oral statements or conversations, and including, but not limited to, any manual, book, pamphlet, periodical, letter, group or individual e-mail, instant message, social media posting or messaging, electronic message board post, report, memorandum, notation, message, facsimile, record, study, working paper, accounting paper, telephone log, chart, graph, index, tape, minutes, computer printout, contract, lease, invoice, record of purchase or sale, correspondence, electronic or other transcription of taping of telephone or personal conversations or conferences, or any and all other written, printed, typed, taped, filmed or graphic matter however produced or reproduced and any electronic, mechanical, computer, e-mail, or Internet records or representations of any kind (including, without limitation, tapes, cassettes, discs, recordings, and computer and electronic memories). **DOCUMENTS** includes the file, folder tabs or containers and labels associated with each original or copy. **DOCUMENTS** shall also include any COMMUNICATIONS.
5. **EMPLOYEE** means and includes, but is not limited to, ALL current or former salaried employees, hourly employees, independent contractors, and individuals performing work as temporary employees.
6. **PERSON** means any natural person, individual, any business entity (whether partnership, corporation, limited-liability company or corporation, trust estate, incorporated or unincorporated association or cooperation), any governmental agency or entity, and any other legal or commercial entity, however organized.
7. **REAL ESTATE BROKER** has the meaning provided by N.C. Gen. Stat. § 93A-2(a).
8. **RELATED TO** means in whole or in part constituting, concerning, evidencing, containing, discussing, commenting upon, describing, analyzing, identifying, stating, pertaining to, referring to, forming the basis of, in preparation of, or contradicting.
9. **YOU** and **YOUR** mean and include Professional Enterprises of Hatteras Island, Inc. d/b/a Surf or Sound Realty and any parent, affiliate, subsidiary or business segment, predecessor, successor or assignee of it, and their principals, operating divisions, present or former owners, EMPLOYEES, servants, officers, directors, agents, representatives, attorneys, accountants, distributors, and any other PERSONS acting on behalf of or under their direction, authorization or control, including through any trade names or fictitious names.
10. **VACATION RENTAL** and **VACATION RENTAL AGREEMENT** have the meanings provided by N.C. Gen. Stat. § 42A-4.

II. INSTRUCTIONS

1. **Authorship and Intended Audience Irrelevant:** This Investigative Demand requests production of all described documents in YOUR possession, custody or control without regard to the PERSON or PERSONS by whom or for whom the documents were prepared (e.g., YOUR EMPLOYEES, representatives, competitors, or others).
2. **Documents No Longer in Possession of Respondent/Destroyed Documents:** If any responsive document was, but no longer is, in YOUR possession, custody or control, produce a description of each such document. The description shall include the following:
 - a. the name of each author, sender, creator, and initiator of such document;
 - b. the name of each recipient, addressee, or party for whom such document was intended;
 - c. the date the document was created;
 - d. the date(s) the document was in use;
 - e. a detailed description of the content of the document;
 - f. the reason it is no longer in YOUR possession, custody or control; and
 - g. the document's current location.

If the document is no longer in existence, in addition to providing the information indicated above, state on whose instructions the document was destroyed or otherwise disposed of, and the date and manner of the disposal.

3. **Privileged Documents:** If any responsive document is withheld under any claim of privilege, provide a detailed privilege log that contains at least the following information for each document that you have withheld:
 - a. the name of each author, writer, sender, creator, or initiator of such document;
 - b. the name of each recipient, addressee, or party for whom such document was intended;
 - c. the date of such document, or an estimate thereof if no date appears on the document;
 - d. the general subject matter of the document; and
 - e. the claimed grounds for withholding the document, including – but not limited to– the nature of any claimed privilege and grounds in support thereof.
4. **Duty to Supplement:** All document requests are continuing in nature so as to require the supplementary production if YOU obtain further responsive documents or information. YOU are also required to amend your responses to the requests contained within this subpoena if YOU discover that the previous response was incorrect or incomplete.
5. **Duty to Preserve Documents:** All documents and/or other data which relate to the subject matter or requests of this Investigative Demand must be preserved. Any destruction involving such documents must cease, even if it is YOUR normal or routine course of business to delete or destroy such documents or data and even if you believe such documents or data are privileged or otherwise need not be produced. The North Carolina Attorney

General considers electronically stored information to be an irreplaceable source of evidence in this matter. Accordingly, YOU must also implement appropriate safeguard against the destruction of electronically stored information that relate to the subject matter or requests of this Investigative Demand until the final resolution of this issue.

III. DOCUMENTS REQUESTED

1. ALL VACATION RENTAL AGREEMENTS for COVERED RENTALS.
2. ALL accounting records for COVERED RENTALS.
3. ALL DOCUMENTS reflecting the payment of refunds for COVERED RENTALS, including data in your electronic records, produced as a spreadsheet computer file in Excel format, listing the payment of each such refund.
4. ALL data in your electronic reservation/leasing system RELATING TO COVERED RENTALS, produced as a spreadsheet computer file in Excel format.
5. ALL contracts effective at any point between March 17, 2020 and May 15, 2020 that YOU entered with the owner(s) of each property that served as a COVERED RENTAL.
6. ALL data in your electronic records that identify the name, email address, telephone number, and home mailing that YOU use to contact the owner of each property that served as a COVERED RENTAL, produced as a spreadsheet computer file in Excel format.
7. ALL COMMUNICATIONS since January 1, 2020 RELATED TO COVERED RENTALS, including but not limited to YOUR internal COMMUNICATIONS and external COMMUNICATIONS.
8. ALL COMMUNICATIONS since January 1, 2020 RELATED TO refunds of rent due under VACATION RENTAL AGREEMENTS, including but not limited to YOUR internal COMMUNICATIONS and external COMMUNICATIONS.
9. ALL COMMUNICATIONS since January 1, 2020 RELATED TO changes in policies or practices for refunds of rent due under VACATION RENTAL AGREEMENTS, including but not limited to YOUR internal COMMUNICATIONS and external COMMUNICATIONS.
10. ALL COMMUNICATIONS since January 1, 2020 RELATED TO travel insurance claims or coverage for COVERED RENTALS, including but not limited to YOUR internal COMMUNICATIONS and external COMMUNICATIONS.
11. ALL contracts effective at any point between March 17, 2020 and May 15, 2020 that YOU entered with a travel insurer or broker of travel insurance.
12. ALL complaints that have been made against YOU, including but not limited to complaints made with any government agency or the Better Business Bureau, RELATED TO a

COVERED RENTAL; YOUR responses to those complaints; and ALL YOUR internal COMMUNICATIONS and other DOCUMENTS that discuss such complaints. Copies of DOCUMENTS sent between YOU and either i) the North Carolina Department of Justice; or ii) the North Carolina Real Estate Commission need not be produced.

13. ALL DOCUMENTS RELATED TO YOUR policies and practices effective since January 1, 2020, including any instructions to EMPLOYEES, for handling payments received pursuant to a VACATION RENTAL AGREEMENT, including but not limited to the accounts to which they are deposited and the timing for releasing them to property owners.
14. ALL DOCUMENTS received or created since January 1, 2020 RELATED TO YOUR assets, liabilities, and bank accounts, including the account number for each account and each statement for each account.
15. ALL DOCUMENTS RELATED TO YOUR ownership structure effective since January 1, 2020.
16. ALL corporate filings, business licenses, certificates of authority, or any other DOCUMENTS RELATED TO YOUR authority to conduct business effective since January 1, 2020.

Issued June 4, 2020, pursuant to the authority of N.C. General Statute § 75-10.

JOSHUA H. STEIN
Attorney General

By: /s/ Daniel P. Mosteller
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