

SETTLEMENT AGREEMENT BETWEEN MISSOURI REAL ESTATE  
APPRAISERS COMMISSION AND BEVERLY L. KALWEI

Beverly L. Kalwei (“Kalwei”) and the Missouri Real Estate Appraisers Commission (“MREAC”) enter into this Settlement Agreement for the purpose of resolving the question of whether Kalwei’s certificate as a state-certified residential real estate appraiser, Certificate No. 2005022511, will be subject to discipline. Pursuant to § 536.060, RSMo 2000,<sup>1</sup> the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri and, additionally, the right to a disciplinary hearing before the MREAC under § 621.110, RSMo Cum. Supp. 2008. The MREAC and Kalwei jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo Cum. Supp. 2008.

Kalwei acknowledges that she understands the various rights and privileges afforded her by law, including the right to a hearing of the charges against her; the right to appear and be represented by legal counsel; the right to have all charges proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing against her at the hearing; the right to present evidence on her behalf at the hearing; the right to a decision upon the record of the hearing by a fair and impartial administrative hearing commissioner concerning the charges pending against her; the right to a ruling on questions of law by the Administrative Hearing Commission; the right to a disciplinary hearing before

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<sup>1</sup>All statutory citations are to the 2000 Revised Statutes of Missouri unless otherwise noted.

the MREAC at which time Kalwei may present evidence in mitigation of discipline; the right to a claim for attorney fees and expenses; and the right to obtain judicial review of the decisions of the Administrative Hearing Commission and the MREAC.

Being aware of these rights provided to her by law, Kalwei knowingly and voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document as they pertain to her.

Kalwei acknowledges that she has received a copy of documents that were the basis upon which the MREAC determined there was cause for discipline, along with citations to law and/or regulations the MREAC believes were violated. Kalwei stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the MREAC that Kalwei's certificate as a state-certified residential real estate appraiser, Certificate No. 2005022511, is subject to disciplinary action by the MREAC in accordance with the relevant provisions of Chapter 621, RSMo Cum. Supp. 2008, and Chapter 339 and §§ 339.500-339.549, RSMo, as amended, the Missouri Certified and Licensed Real Estate Appraisers Act.

The parties stipulate and agree that the disciplinary order agreed to by the MREAC and Kalwei in Part II herein is based only on the agreement set out in Part I herein. Kalwei understands that the MREAC may take further disciplinary action against her based on facts or conduct not specifically mentioned in this document that are either now known to the MREAC or may be discovered.

I.

Joint Stipulation of Facts and Conclusions of Law

Based upon the foregoing, the MREAC and Kalwei herein jointly stipulate:

1. The MREAC was established pursuant to § 339.507, RSMo, for the purpose of executing and enforcing the provisions of §§ 339.500 through 339.549, RSMo, as amended, the Missouri Certified and Licensed Real Estate Appraisers Act.

2. Kalwei holds a current and active certificate from the MREAC as a state-certified residential real estate appraiser. Kalwei's certificate, Certificate No. 2005022511, was originally issued on July 20, 2005, and has an expiration date of June 30, 2010.

3. Jurisdiction and venue are proper before the Administrative Hearing Commission pursuant to §§ 621.045 and 339.532, RSMo Cum. Supp. 2008.

4. In or about July 2004, Michael O. Witt ("Witt"), a state-licensed real estate appraiser, Certificate No. 2004010513, provided his electronic signature to Kalwei for her to place on a real estate appraisal he had prepared and/or supervised and asked her to submit the appraisal to the client.

5. Witt instructed Kalwei to delete his electronic signature after ensuring that the client had received the real estate appraisal he had prepared and/or supervised.

6. On or about July 15, 2005, Kalwei prepared and/or supervised the preparation of a Summary Appraisal Report for 21715 South SR 291, Harrisonville, MO 64701 (the "South SR 291 Appraisal Report").

7. On or about July 15, 2005, Kalwei signed the South SR 291 Appraisal Report.
8. On or about July 15, 2005, Kalwei placed the electronic signature of Witt in the Supervisory Appraiser signature block on the South SR 291 Appraisal Report.
9. Witt did not supervise, assist, and/or participate in the preparation of the South SR 291 Appraisal Report.
10. On or about July 17, 2005, Kalwei prepared and/or supervised the preparation of a Summary Appraisal Report for 205 North Highland Drive, Raymore, MO 64083 (the “North Highland Drive Appraisal Report”).
11. On or about July 17, 2005, Kalwei signed the North Highland Drive Appraisal Report.
12. On or about July 17, 2005, Kalwei placed the electronic signature of Witt in the Supervisory Appraiser signature block on the North Highland Drive Appraisal Report.
13. Witt did not supervise, assist, and/or participate in the preparation of the North Highland Drive Appraisal Report.
14. On or about July 20, 2005, Kalwei prepared and supervised the preparation of a Summary Appraisal Report for 26514 South Lake Drive, Harrisonville, MO 64701 (the “South Lake Drive Appraisal Report”).
15. On or about July 20, 2005, Kalwei signed the South Lake Drive Appraisal Report.

16. On or about July 20, 2005, Kalwei placed the electronic signature of Witt in the Supervisory Appraiser signature block on the South Lake Drive Appraisal Report.

17. Witt did not supervise, assist, and/or participate in the preparation of the South Lake Drive Appraisal Report.

18. By placing Witt's electronic signature on the South SR 291 Appraisal Report, the North Highland Drive Appraisal Report, and the South Lake Drive Appraisal Report when he had not supervised, assisted, and/or participated in the preparation of those appraisal reports, Kalwei violated USPAP<sup>2</sup> Standard 2 and Standards Rules 2-1(a) and 2-3.

19. Based on Kalwei's conduct in preparing the South SR 291 Appraisal Report, the North Highland Drive Appraisal Report, and the South Lake Drive Appraisal Report, Kalwei violated the Conduct provision of the USPAP Ethics Rule.

20. Section 339.535, RSMo, states: "State certified real estate appraisers and state licensed real estate appraisers shall comply with the Uniform Standards of Professional Appraisal Practice promulgated by the appraisal standards board of the appraisal foundation."

21. Cause exists to discipline Kalwei's certification as a state-certified residential real estate appraiser pursuant to § 339.532, RSMo Cum. Supp. 2008, which states, in pertinent part:

2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any state-certified real estate appraiser, state-licensed real estate appraiser, or any person who

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<sup>2</sup>USPAP refers to the Uniform Standards of Professional Appraisal Practice 2005.

has failed to renew or has surrendered his or her certificate or license for any one or any combination of the following causes:

....

(5) Incompetency, misconduct . . . dishonesty . . . in the performance of the functions or duties of any profession licensed or regulated by sections 339.500 to 339.549;

(6) Violation of any of the standards for the development or communication of real estate appraisals as provided in or pursuant to sections 339.500 to 339.549;

(7) Failure to comply with the Uniform Standards of Professional Appraisal Practice promulgated by the appraisal standards board of the appraisal foundation;

(8) Failure or refusal without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report, or communicating an appraisal;

(9) Negligence or incompetence in developing an appraisal, in preparing an appraisal report, or in communicating an appraisal;

(10) Violating, assisting or enabling any person to willfully disregard any of the provisions of sections 339.500 to 339.549 or the regulations of the commission for the administration and enforcement of the provisions of sections 339.500 to 339.549;

....

(14) Violation of any professional trust or confidence[.]

22. Pursuant to MREAC's investigation, Kalwei was interviewed, on or about October 14, 2005, by telephone. Kalwei admitted that she improperly used Witt's electronic

signature on two reports: (1) the South Lake Drive Appraisal and (2) the North Highland Drive Appraisal.

23. Kalwei did not disclose her improper use of Witt's electronic signature on the third report, the South SR 291 Appraisal.

24. On or about July 12, 2006, the MREAC continued its investigation into Kalwei's above-referenced conduct.

25. Kalwei admitted her improper use of Witt's electronic signature on the South SR 291 Appraisal on or about June 22, 2006, during a subsequent interview with the MREAC.

26. Kalwei's conduct, as alleged herein, constitutes a violation of a professional trust and/or confidence with the MREAC.

27. Kalwei's conduct, as alleged herein, constitutes incompetency, misconduct, and dishonesty in the performance of her functions or duties as a state-certified residential real estate appraiser.

28. Cause exists to discipline Kalwei's certification as a state-certified residential real estate appraiser pursuant to § 339.532, RSMo Cum. Supp. 2008, which states, in pertinent part:

2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any state-certified real estate appraiser, state-licensed real estate appraiser, or any person who has failed to renew or has surrendered his or her certificate or license for any one or any combination of the following causes:

....  
(5) Incompetency, misconduct. . . dishonesty. . .in the performance of the functions or duties of any profession licensed or regulated by sections 339.500 to 339.549;

....  
(14) Violation of any professional trust or confidence[.]

II.  
Joint Agreed Disciplinary Order

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the MREAC in this matter under the authority of § 536.060, RSMo, and §§ 621.045.3 and 621.110, RSMo Cum. Supp. 2008.

1. **Kalwei's certificate is suspended, followed by a period of probation.**

Kalwei's certificate as a state-certified residential real estate appraiser is hereby SUSPENDED for a period of 90 DAYS and shall immediately thereafter be placed on PROBATION for a period of 2 YEARS. The periods of suspension and probation shall constitute the "disciplinary period." During the period of suspension, Kalwei shall not be entitled to practice as a state-certified residential real estate appraiser pursuant to Chapter 339 and §§ 339.500-339.549, RSMo, as amended. During the period of probation, Kalwei shall be entitled to practice as a state-certified residential real estate appraiser under Chapter 339 and §§ 339.500-339.549, RSMo, as amended, provided Kalwei adheres to all the terms of this Settlement Agreement.

2. **Terms and conditions of the disciplinary period.** The terms and conditions of the disciplinary period are:

A. Kalwei shall submit written reports to the MREAC by no later than September 1 and March 1 during each year of the disciplinary period stating truthfully whether there has been compliance with all terms and conditions of this Settlement Agreement. The first written report shall be submitted on or before September 1, 2009. The final written report shall be submitted to the MREAC 90 days prior to the end of the disciplinary period. Each written report shall be submitted no earlier than 30 days prior to the respective due date. Kalwei is responsible for assuring that the reports are submitted to and received by the MREAC.

B. During the disciplinary period, Kalwei shall maintain a log of all appraisal assignments as required by 20 CSR 2245-2.050. A true and accurate copy of the log shall be submitted to the MREAC by no later than September 1 and March 1 during each year of the disciplinary period. The first log shall be submitted on or before September 1, 2009. The last log shall be submitted to the MREAC 90 days prior to the end of the disciplinary period. Each log submitted shall be current to at least 30 days prior to the respective due date. Kalwei is responsible for assuring that the logs are submitted to and received by the MREAC. Upon MREAC request, Kalwei shall submit copies of her work samples for MREAC review.

C. During the disciplinary period, Kalwei shall not serve as a supervising appraiser to trainee real estate appraisers under 20 CSR 2245-3.005. Within ten days of the effective date of this Settlement Agreement, Kalwei shall advise each trainee real estate appraiser working under her that the supervisory relationship is terminated and comply with all other requirements of 20 CSR 2245-3.005 regarding the termination of the supervisory relationship.

D. During the disciplinary period, Kalwei shall keep the MREAC apprised at all times in writing of her current work and home addresses and telephone numbers at each place of residence and employment. Kalwei shall notify the MREAC in writing of any change in address or telephone number within 15 days of a change in this information.

E. Kalwei shall timely renew her certificate and timely pay all fees required for certificate renewal and comply with all other MREAC requirements necessary to maintain her certificate in a current and active state.

F. During the disciplinary period, Kalwei shall comply with all provisions of §§ 339.500 through 339.549, RSMo, as amended; all rules and regulations promulgated thereunder; and all federal and state laws. "State" includes the State of Missouri and all other states and territories of the United States. Any cause to discipline Kalwei's certificate as a state-certified residential real estate appraiser

under § 339.532.2, RSMo Cum. Supp. 2008, that accrues during the disciplinary period shall also constitute a violation of this Settlement Agreement.

G. Kalwei shall accept and comply with reasonable unannounced visits from the MREAC's duly authorized agents to monitor compliance with the terms and conditions stated herein.

H. Kalwei shall appear before the MREAC or its representative for a personal interview upon the MREAC's written request.

I. If, at any time within the disciplinary period, Kalwei removes herself from the State of Missouri, ceases to be currently certified under the provisions of §§ 339.500 through 339.549, RSMo, as amended, or fails to keep the MREAC advised of all current places of residence and business, the time of absence, unlicensed status, or unknown whereabouts shall not be deemed or taken as any part of the disciplinary period.

3. Upon the expiration of the disciplinary period, Kalwei's certificate shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the MREAC determines that Kalwei has violated any term or condition of this Settlement Agreement, the MREAC may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke, or otherwise lawfully discipline Kalwei's certificate.

4. No additional discipline shall be imposed by the MREAC pursuant to the preceding paragraph of this Settlement Agreement without notice and opportunity for hearing before the MREAC as a contested case in accordance with the provisions of Chapter 536, RSMo, as amended.

5. This Settlement Agreement does not bind the MREAC or restrict the remedies available to it concerning any future violations by Kalwei of Chapter 339 and §§ 339.500-339.549, RSMo, as amended, or the regulations promulgated thereunder, or of the terms and conditions of this Settlement Agreement.

6. This Settlement Agreement does not bind the MREAC or restrict the remedies available to it concerning facts or conduct not specifically mentioned in this Settlement Agreement that are either now known to the MREAC or may be discovered.

7. If any alleged violation of this Settlement Agreement occurred during the disciplinary period, the parties agree that the MREAC may choose to conduct a hearing before it either during the disciplinary period, or as soon thereafter as a hearing can be held, to determine whether a violation occurred and, if so, may impose further disciplinary action. Kalwei agrees and stipulates that the MREAC has continuing jurisdiction to hold a hearing to determine if a violation of this Settlement Agreement has occurred.

8. Each party agrees to pay all their own fees and expenses incurred as a result of this case, its litigation, and/or its settlement.

9. The terms of this Settlement Agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Settlement Agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

10. The parties to this Settlement Agreement understand that the MREAC will maintain this Settlement Agreement as an open record of the MREAC as required by Chapters 339, 610, and 324, RSMo, as amended.

11. Kalwei, together with her partners, shareholders, officers, directors, heirs, assigns, agents, employees, representatives, and attorneys, does hereby waive, release, acquit, and forever discharge the MREAC, its respective members, employees, agents, and attorneys including former members, employees, agents, and attorneys, of, or from any liability, claim, actions, causes of action, fees, costs, expenses, and compensation, including, but not limited to, any claim for attorney's fees and expenses, whether or not now known or contemplated, including, but not limited to, any claims pursuant to § 536.087, RSMo, as amended, or any claim arising under 42 U.S.C. § 1983, which now or in the future may be based upon, arise out of, or relate to any of the matters raised in this case or its litigation or from the negotiation or execution of this Settlement Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of the Settlement Agreement in that it

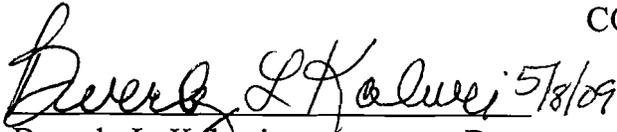
survives in perpetuity even in the event that any court or administrative tribunal deems this agreement or any portion thereof void or unenforceable.

12. Kalwei understands that she may, either at the time the Settlement Agreement is signed by all parties, or within 15 days thereafter, submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Kalwei's certificate. If Kalwei desires the Administrative Hearing Commission to review this Settlement Agreement, Kalwei may submit her request to: Administrative Hearing Commission, Truman State Office Building, Room 640, 301 West High Street, P.O. Box 1557, Jefferson City, Missouri 65102.

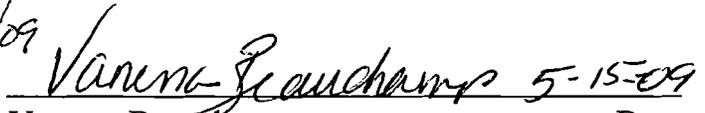
13. If Kalwei requests review, this Settlement Agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the Settlement Agreement sets forth cause for disciplining Kalwei's certificate. If Kalwei does not request review by the Administrative Hearing Commission, the Settlement Agreement goes into effect 15 days after the document is signed by the Executive Director of the MREAC.

LICENSEE

MISSOURI REAL ESTATE APPRAISERS  
COMMISSION

  
Beverly L. Kalwei

Date

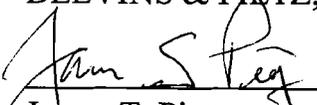
  
Vanessa Beauchamp  
Executive Director

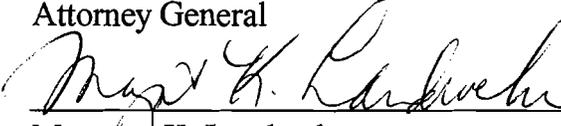
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