

SETTLEMENT AGREEMENT BETWEEN MISSOURI REAL ESTATE APPRAISERS
COMMISSION AND DALE SMITH

Dale Smith (“Smith”) and the Missouri Real Estate Appraisers Commission (“MREAC”) enter into this Settlement Agreement for the purpose of resolving the question of whether Smith’s certification as a state-certified residential real estate appraiser, Certificate No. 2007034042, will be subject to discipline. Pursuant to § 536.060, RSMo 2000,¹ 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. 2009. The MREAC and Smith jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo Cum. Supp. 2009.

Smith acknowledges that he understands the various rights and privileges afforded him by law, including the right to a hearing of the charges against him; 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 him at the hearing; the right to present evidence on his 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 him; the right to a ruling on questions of law by the Administrative Hearing Commission; the right

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

to a disciplinary hearing before the MREAC at which time Smith may present evidence in mitigation of discipline; the right to seek recovery of 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 him by law, Smith 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 him.

Smith acknowledges that he 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. Smith stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the MREAC that Smith's certification as a state-certified residential real estate appraiser, Certificate No. 2007034042, is subject to disciplinary action by the MREAC in accordance with the relevant provisions of Chapters 339.500 through 339.549 and 621, RSMo, as amended.

The parties stipulate and agree that the disciplinary order agreed to by the MREAC and Smith in Part II herein is based only on the agreement set out in Part I herein.

I.

Joint Stipulation of Facts and Conclusions of Law

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

1. The Missouri Real Estate Appraisers Commission was established pursuant to § 339.507, RSMo, for the purpose of executing and enforcing the provisions of §§ 339.500 through 339.549, RSMo.

2. On or about October 10, 2003, Smith was licensed by the MREAC as a state-licensed real estate appraiser, license number 2003026487. Smith's license was current and active at all relevant times herein.

3. On or about October 30, 2007, Smith was certified by the MREAC as a state-certified residential real estate appraiser, certificate number 2007034042. Smith's residential real estate appraiser's certification will expire on October 30, 2012.

4. Such license was at all times relevant to this action, current and active. Such certification is current and active. Since becoming licensed and certified as a real estate appraiser, Smith has established professional trust and confidence with his clients and the public.

5. On or about November 17, 2005, Smith completed and signed a summary appraisal report for residential real estate located at 79 Wolf Meadow Ct., St. Peters, Missouri 63304 ("the Wolf Meadow property"). The effective date of the appraisal report was November 17, 2005. This appraisal valued the property at three hundred forty thousand dollars (\$340,000). This appraisal shall be referred to hereinafter as the "Wolf Meadow Appraisal Report."

6. Smith was required to develop and report the results of the Wolf Meadow Appraisal in compliance with the Uniform Standards of Professional Appraisal Practice

：“USPAP”），2005 Edition.

7. The Wolf Meadow Appraisal Report was prepared for Foundation Mortgage, a Missouri business.

8. In developing and reporting the results of the Wolf Meadow Appraisal Report, Smith made significant and substantial errors of omission and commission including, but not limited to:

- a. There is no Cost Approach used, even though it would be an accurate indicator of value for a 5-year old home, the Sales Comparison Approach did not use appropriate sales in that the subject property was compared to property with superior quality and condition, the appraisal form is not accurately completed, and data in the report contains errors;
- b. The subject property backs to a semi-busy road and a very modest adjustment was made in the market grid indicating the subject property suffers some external obsolescence factors, however, the appraisal states that the subject property does not suffer external obsolescence;
- c. Comparable Sales used in the Sales Comparison Approach suggests Smith selectively picked the highest sales and ignored a number of more relevant sales in the same basic development;
- d. Sale 3 in the Sales Comparison Approach should not have been compared to the subject property in that it is located in a higher priced development and comparables within the subject property’s development were available;

- e. Smith failed to provide a reconciliation of data used in the Sales Comparison Approach;
- f. Smith failed to provide reconciliation of the applicability or suitability of the Sales Comparison, Cost, and Income approaches; and
- g. Overall, the Wolf Meadow Appraisal Report overstates the value, is not credible, is misleading, and/or is fraudulent.

9. On or about November 17, 2005, Smith completed and signed a summary appraisal report for residential real estate located at 2385 Federalist Place, O'Fallon, Missouri, 63366 ("the Federalist Place property"). The effective date of the appraisal report was November 17, 2005. This appraisal valued the property at two hundred twenty-nine thousand dollars (\$229,000). This appraisal shall be referred to hereinafter as the "Federalist Place Appraisal Report."

10. Smith was required to develop and report the results of the Federalist Place Appraisal in compliance with the USPAP, 2005 edition.

11. The Federalist Place Appraisal Report was prepared for Foundation Mortgage, a Missouri business.

12. In developing and reporting the results of the Federalist Place Appraisal Report, Smith made significant and substantial errors of omission and commission, including, but not limited to:

- a. The Sales Comparison Approach did not use appropriate sales in that the subject property was compared to property with superior quality and

condition;

- b. The selection of the comparable sales suggests Smith selectively picked the highest sales and ignored a number of more relevant sales in the same basic development;
- c. Smith failed to explain why he used comparable sales located outside of the subdivision in which the subject property was located;
- d. There is no Cost Approach, which is considered relevant on a new or fairly new home; and
- e. Smith failed to provide a reconciliation of data used in the Sales Comparison Approach;
- f. Smith failed to provide reconciliation of the applicability or suitability of the Sales Comparison, Cost, and Income approaches; and
- g. Overall, the Federalist Place Appraisal Report overstates the value, is not credible, is misleading, and/or is fraudulent.

13. Based on Smith's conduct as alleged herein, Smith failed to comply with the Uniform Standards of Professional Appraisal Practice, in violation of § 339.535, RSMo, which 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.

14. Based on Smith's conduct as alleged herein, cause exists to discipline his certification as a real estate appraiser under §§ 339.532.2, RSMo, which provides in

pertinent part:

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, gross negligence, dishonesty, fraud, or misrepresentation 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 ["USPAP"] 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[.]

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, as amended.

1. **Smith's certification is subject to a period of probation.** Smith's certification as a state-certified residential real estate appraiser is hereby placed on PROBATION for a period of THREE YEARS. The three-year period of probation shall constitute the "disciplinary period." During the disciplinary period, Smith shall be entitled to practice as a state-certified real estate appraiser under Chapter 339, RSMo, provided Smith 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 as follows:

A. Within twelve months after the effective date of this Settlement Agreement, Smith shall submit verification to the MREAC of successful completion of the fifteen-hour approved National USPAP course, including examination. This course will not replace the 7-hour National USPAP course required by the general continuing education requirements.

B. Within twelve months after the effective date of this Settlement Agreement, Smith shall submit verification to the MREAC of successful completion of a 15-hour course in market analysis. Smith may not apply the

education required by this Settlement Agreement to satisfy the continuing education hours required for his certification renewal.

C. Smith shall submit written reports to the MREAC by no later than December 1 and June 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 June 1, 2011. 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. Smith is responsible for assuring that the reports are submitted to and received by the MREAC.

D. During the disciplinary period, Smith 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 December 1 and June 1 during each year of the disciplinary period. The first log shall be submitted on or before June 1, 2011. 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. Smith is responsible for assuring that the logs are submitted to and received by the MREAC. Upon MREAC request, Smith shall submit copies of her work samples for MREAC review.

E. During the period of probation, Smith shall not sign appraisal reports as a supervising appraiser.

F. During the disciplinary period, Smith 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, Smith shall advise each trainee real estate appraiser working under his 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.

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

H. Smith shall timely renew his certification and timely pay all fees required for certification renewal and comply with all other MREAC requirements necessary to maintain his certification in a current and active state.

I. During the disciplinary period, Smith shall comply with all provisions of §§ 339.500 through 339.549, RSMo, 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 Smith's certification as a real estate appraiser under § 339.532.2, RSMo, as amended, that accrues during the disciplinary period shall also constitute a violation of this Settlement Agreement.

J. Smith 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.

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

L. If, at any time within the disciplinary period, Smith removes himself from the state of Missouri, ceases to be currently certified under the provisions of §§ 339.500 through 339.549, RSMo, or fails to keep the MREAC advised of all current places of residence and business, the time of absence, uncertified 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, the certification of Smith shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the MREAC determines that Smith 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 Smith's certification.

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.

5. This Settlement Agreement does not bind the MREAC or restrict the remedies available to it concerning any future violations by Smith of §§ 339.500 through 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. Smith 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 of their own fees and expenses incurred as a result of this case, its litigation, and/or its settlement.

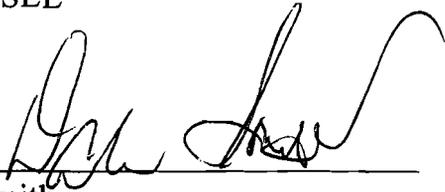
9. The terms of this Settlement Agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Settlement Agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed 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. Smith, together with his partners, 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. This Settlement Agreement goes into effect 15 days after the document is signed by the Executive Director of the MREAC. Upon full execution and finalization of this Settlement Agreement between the parties, including proper signatures from each party, the MREAC agrees to dismiss, with prejudice, its case against Smith currently pending before the Administrative Hearing Commission.

LICENSEE



Dale Smith

Date 3-1-11

MISSOURI REAL ESTATE APPRAISERS
COMMISSION



Vanessa Beauchamp
Executive Director

Date 3-7-11

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