

**BEFORE THE MISSOURI
REAL ESTATE APPRAISERS COMMISSION**

MISSOURI REAL ESTATE)	
APPRAISERS COMMISSION,)	
)	
Petitioner,)	
v.)	No. 2006-005647
)	
DAVID AKIN,)	
)	
Respondent.)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DISCIPLINARY ORDER**

I.

Statement of the Case

The Missouri Real Estate Appraisers Commission (“Commission”) finds that on or about April 12 2009, the Commission and David Akin entered into a Settlement Agreement Between Missouri Real Estate Appraisers Commission and David Akin (“Settlement Agreement”). The Commission hereby adopts and incorporates as if fully set out herein the findings of fact and conclusions of law as set out in the Settlement Agreement. The Commission hereby approves, incorporates as if fully set out herein and orders the joint agreed disciplinary order as set out in the Settlement Agreement.

Pursuant to notice and § 621.110 and § 339.532.3, RSMo, the MREAC held a hearing on May 7, 2009, at approximately 1:00 p.m. at the Missouri Council of School Administrators Building, 3530 Amazonas Drive, Jefferson City, Missouri, for the purpose of determining the appropriate disciplinary action against Respondent’s certification. The MREAC was represented by Assistant Attorney General Craig Jacobs. Respondent was present for the hearing and was not represented by counsel. After being present and

considering all of the evidence presented during the hearing, the MREAC issues the following Findings of Facts, Conclusions of Law and Order.

II.

Findings of Fact

1. Respondent holds a residential real estate appraiser certification from the MREAC (license # 2004017721).

2. On or about October 27, 2006, Respondent and the MREAC entered into a Settlement Agreement Between Missouri Real Estate Appraisers Commission and David S. Akin (“Settlement Agreement”).

3. In the Settlement Agreement Respondent stipulated the MREAC has cause to discipline his certification pursuant to § 339.532.2 (5), (6), (7), (8), (9), (10) and (14), RSMo 2000.

4. The MREAC adopts and incorporates herein by reference the Settlement Agreement in its entirety, including the Joint Stipulation of Facts, Joint Conclusions of Law, Additional Settlement Terms, and enters its findings consistent therewith.

5. The MREAC set this matter for disciplinary hearing and served notice of the disciplinary hearing upon Respondent in a proper and timely fashion.

III.

CONCLUSIONS OF LAW

6. The MREAC has jurisdiction over this proceeding pursuant to § 621.110 and § 339.532.3, RSMo.

7. The MREAC adopts and incorporates herein by reference the Settlement Agreement in its entirety, including the Joint Stipulation of Facts, Joint Conclusions of Law, Additional Settlement Terms, and enters its conclusions of law consistent therewith.

8. As a result of the foregoing, Respondent's residential real estate appraiser certification is subject to disciplinary action by the MREAC, pursuant to § 339.532.2(5), (7), (8), (9), (10) and (14), RSMo 2000.

9. The MREAC has determined that this Order is necessary to ensure the protection of the public.

IV.

Order

A. Having fully considered all the evidence before the MREAC, and giving full weight to the Consent Order of the Administrative Hearing Commission and the Joint Stipulation, it is the **ORDER** of the MREAC, that Respondent's general real estate appraiser certification is hereby placed on **PROBATION** for **TWO (2) YEARS** from the effective date of this Order, subject to the following terms and conditions:

1. Akin shall be entitled to engage in the practice of real estate appraising as a certified residential real estate appraiser pursuant to § 339.500 to § 339.549, RSMo, as amended, provided Akin adheres to all of the terms and conditions of this Order.
2. During the probationary period, Akin shall not supervise any real estate appraisal, as defined by § 339.503(1), RSMo (as amended), of property located in the state of Missouri nor act in any manner as an appraisal supervisor.
3. Akin shall successfully attend and complete a fifteen (15) hour Cost Approach course/class approved by the MREAC. The courses/classes must include a testing requirement which test Akin shall successfully complete and pass. Akin shall submit proof of successful completion of the aforementioned classes/courses and test to the MREAC within one year of the effective date of his probation. No portion of the Cost Approach class/course required by this Order may be used to

satisfy the appraiser continuing education requirements established by Chapter 339, RSMo (as amended), or the rules of the MREAC.

4. Akin shall successfully attend and complete a fifteen (15) hour Market Data Analysis course/class approved by the MREAC. The courses/classes must include a testing requirement which test Akin shall successfully complete and pass. Akin shall submit proof of successful completion of the aforementioned classes/courses and test to the MREAC within one year of the effective date of his probation. No portion of the Market Data Analysis class/course required by this Order may be used to satisfy the appraiser continuing education requirements established by Chapter 339, RSMo (as amended), or the rules of the MREAC.
5. During the probationary period, Akin shall maintain a log of all appraisal assignments completed, including appraisal values. Akin shall submit a true and accurate copy of his log to the MREAC every six (6) months after the effective date of this Order. Each log, except for the final log, shall be submitted within 15 days after the end of the respective six month period. Akin shall submit the final log 30 days prior to the end of the probationary period. All logs shall comply with rule 4 CSR 245-2.050.
6. During the probationary period, Akin shall submit samples of his appraisals as requested by the MREAC for review.
7. During the probationary period, Akin shall comply with all applicable provisions of Chapter 339, RSMo, as amended, all applicable MREAC regulations and all applicable federal and state laws. "State" includes the state of Missouri, all other states and territories of the United States, and the ordinances of their political subdivisions. Akin shall be deemed in violation of this Order and the terms of his probation if he is adjudicated, found guilty of or pleads guilty or nolo contendere to, a criminal offense, whether or not sentence is imposed.
8. Akin shall meet in person with the MREAC or its representative at any such time and place as required by the MREAC or its designee upon notification from the MREAC or its designee. Said meetings will be at the MREAC's discretion and may occur periodically during the probationary period.
9. Akin shall immediately submit documents showing compliance with the requirements of this Order to the MREAC when requested by the MREAC or its designee.
10. If Akin fails to comply with the terms of this order during the probationary period, in any respect, the MREAC may choose to conduct a hearing before it either during the probationary period, or as soon thereafter as a hearing can be held, to determine whether a violation occurred. In the event MREAC determines that Akin has violated any term or condition of this Order, the MREAC may, in its discretion, vacate this Order and may impose additional discipline as deemed

appropriate by the MREAC, including revocation of the certificate, pursuant to § 620.153, RSMo. The MREAC has continuing jurisdiction to hold a hearing to determine if a violation of this Order has occurred.

11. Akin shall keep the MREAC apprised of his current home and work addresses and telephone numbers. Akin shall inform the MREAC in writing within ten (10) days of any change in this information.
12. During the probationary period, Akin shall timely renew his certification, timely pay all fees required for certification and comply with all other requirements necessary to maintain his certification current and active.
13. During the probationary period, Akin shall accept and comply with unannounced visits from the MREAC's representatives to monitor compliance with the terms and conditions of this Order.
14. This Order does not bind the MREAC or restrict the remedies available to the MREAC for any violation of § 339.500 to § 339.549, RSMo, as amended, not specifically mentioned in this document.
15. Upon the expiration of the probationary period, Akin's certification shall be fully restored if all other requirements of law have been satisfied provided, however, that in the event the MREAC determines that Akin has violated any term or condition of this Order, the MREAC may, in its discretion, vacate and set aside the probation imposed herein and may impose any other lawful discipline the MREAC shall deem appropriate, including, revocation of said certification. No order shall be entered by the MREAC pursuant to this paragraph without any required notice and opportunity for a hearing before the MREAC in accordance with Chapter 536, RSMo, as amended.
16. If the MREAC determines that Akin has violated a term or condition of this Order, which violation would also be actionable in a proceeding before the Administrative Hearing Commission or the circuit court, the MREAC may elect to pursue any lawful remedies or procedures afforded it and is not bound by this Order in its determination of appropriate legal actions concerning that violation.
17. If, at any time during the probationary period, Akin ceases to reside in the state of Missouri, or ceases to maintain his state real estate appraiser license current or active under the provisions of Chapter 339, RSMo, as amended, or fails to keep MREAC advised of his current places of residence and business, the time of such absence, unlicensed or inactive status, or unknown whereabouts shall not be deemed or taken to satisfy any part of the probationary period.
18. Unless otherwise specified by the MREAC, all reports, documentation, evaluations, notices, or other materials required to be submitted to the MREAC

shall be forwarded to: Missouri Real Estate Appraisers Commission, P.O. Box 1335, Jefferson City, Missouri 65102.

19. Any failure by Akin to comply with any condition of discipline set forth herein constitutes a violation of this Order.

C. The terms of this Order are contractual, legally enforceable, and binding and not mere recitals. Except as otherwise contained herein, neither this Order 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.

D. The MREAC will maintain this Order as an open record of the MREAC as provided in Chapters 324, 339, and 610, RSMo.

SO ORDERED, this 18th day of May, 2009.

MISSOURI REAL ESTATE APPRAISERS COMMISSION


Vanessa Beauchamp
Executive Director

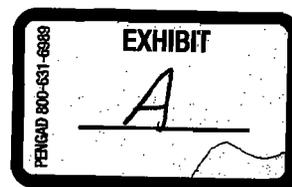
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**SETTLEMENT AGREEMENT BETWEEN MISSOURI REAL ESTATE
APPRAISERS COMMISSION AND DAVID S. AKIN**

David S. Akin (“Akin”) and the Missouri Real Estate Appraisers Commission (“MREAC”) and enter into this settlement agreement for the purpose of resolving the question of whether cause exists for the MREAC to discipline Akin’s certification as a state-certified residential real estate appraiser.

Pursuant to the terms of § 536.060, RSMo,¹ the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri and agree that a final disposition of this matter may be effectuated following a disciplinary hearing before the MREAC.

Akin acknowledges that he understands the various rights and privileges afforded him by law, including the right to an evidentiary hearing of the charges against him; the right to appear and be represented by legal counsel; the right to have all charges against him proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the evidentiary hearing against him; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against him; and the right to request attorneys fees incurred in defending against the MREAC’s action against his certification. Being aware of these rights provided him by operation of law, Akin 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.



Akin acknowledges that he has received a copy of the investigative report and other documents relied upon by the MREAC in determining there was cause for discipline, along with citations to law and/or other regulations the MREAC believes were violated. For the purpose of settling this dispute, Akin stipulates that the factual allegations contained in this settlement agreement are true and stipulates with the MREAC that Akin's as a state-certified residential real estate appraiser, certificate no. 200401772, is subject to disciplinary action by the MREAC in accordance with the provisions of Chapter 621 and Chapter 335, RSMo.

I. Joint Stipulation of Facts

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.

2. Akin is certified by the MREAC as a residential real estate appraiser, certificate no. 2004017721 ("certification"). Akin's license was current and active at all relevant times herein.

3. On October 27, 2006, Akin prepared a Summary Appraisal Report ("Flattsmill Court Appraisal Report") for 5305 Flattsmill Court, Columbia, MO 65203 ("Property"). The effective date of the appraisal report was October 27, 2006. This appraisal valued the Property at \$230,000.

4. Pursuant to § 339.535, RSMo, the preparation of the Flattsmill Court Appraisal Report was required to be prepared in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP), 2006 edition.

¹ All statutory citations are to the 2000 Missouri Revised Statutes, as amended, unless otherwise stated.

5. The Flatsmill Court Appraisal Report was prepared for America One Finance located in St. Peters, MO.

6. Based on the following errors and omissions in the preparation of the Flattsmill Court Appraisal Report, Akin is in violation of § 339.535, RSMo, USPAP Standards 1 and 2, and USPAP Standards Rules 1-1(a), (b) and (c), 1-2(e)(iv), 1-4(a), 1-4(b)(i) and (ii), 1-5(a), 1-6(a), 2-1(a) and (b), and 2-2(b)(viii):

- a. Akin failed to correctly employ recognized methods and techniques necessary to produce a credible appraisal in that he ignored relevant listings and sales to give a misleading value indication as of the date of value.
- b. Akin committed a substantial error significantly affecting the appraisal by failing to use pertinent listings and sales in his creation of the appraisal.
- c. Akin used comparable sales which were located outside of the Property's subdivision when more appropriate comparable sales were available within the Property's subdivision.
- d. Akin failed to disclose that the Property was subject to a homeowner's association with fees, failed to identify what the fees were, and failed to identify what amenities were covered by the fees.
- e. In the Cost Approach, Akin stated a site value of \$35,000, but failed to develop and support the estimated site value using an appropriate appraisal method or technique.
- f. Akin failed to consider two prior listings of the Property in the prior year.
- g. Akin failed to analyze why the second and third comparable sales he used for sold higher than the list price.

- h. Akin did not provide reasoning to support using Reproduction Cost analysis.
- i. Akin stated that the third comparable sale he used is across the street from the Property, when in fact, the third comparable sale he used is over one-half mile away from the property.

7. Based on Akin's errors and omissions in the Flattsmill Court Appraisal Report as described above, the appraisal overstates the value of the Property, lacks credibility, and/or is misleading.

II. Joint Conclusions of Law

8. Section 339.535, RSMo, provides:

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 MREAC of the appraisal foundation.

9. Based on Akin's errors and omissions in the preparation of the Flattsmill Court Appraisal Report, cause exists to discipline Akin's certification as a state-certified residential real estate appraiser pursuant to § 339.532.2(5), (6), (7), (8), (9), (10) and (14), RSMo, which states:

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 certificate of 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 promulgated by the appraisal standards MREAC 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[.]

III. Additional Settlement Terms

10. The parties to this settlement agreement understand that the MREAC will maintain this settlement agreement and any Final Order issued by the MREAC, as an open and public record of the MREAC as provided in Chapters 339, 610, and 620, RSMo.

11. 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.

12. Akin, together with his heirs, assigns, and his attorneys, hereby waives and releases the MREAC, its members and any of its employees, agents, or attorneys, including any former MREAC members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including, but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to § 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this litigation, or from the negotiation or execution of this settlement agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this settlement agreement in that it survives in perpetuity even in the event that any court of law deems this settlement agreement or any portion thereof void or unenforceable.

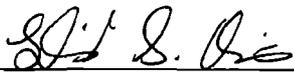
13. Akin understands that he may, either at the time the settlement agreement is signed by all parties, or within fifteen (15) days thereafter, submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Akin's certification. If Akin desires the Administrative Hearing Commission to review this agreement, Akin may submit his request to: Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri, 65101.

14. If Akin 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 Akin's certification. If Akin 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**



David S. Akin



Vanessa Beauchamp
Executive Director
Missouri Real Estate Appraisers Commission

Date: 1-26-09

Date: 3-12-09

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