

SETTLEMENT AGREEMENT BETWEEN
MISSOURI REAL ESTATE APPRAISERS COMMISSION
AND DENNIS C. KEITHLEY

Dennis C. Keithley (“Keithley”) and the Missouri Real Estate Appraisers Commission (“MREAC”) enter into this Settlement Agreement for the purpose of resolving the question of whether Keithley’s certification as a state-certified residential real estate appraiser, No. RA002132, 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 and, additionally, the right to a disciplinary hearing before the MREAC under § 621.110, RSMo Cum. Supp. 2008. The MREAC and Keithley 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.

Keithley 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;

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

the right to a disciplinary hearing before the MREAC at which time Keithley 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 him by law, Keithley 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.

Keithley 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. Keithley stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the MREAC that Keithley's certification as a state-certified residential real estate appraiser, certificate no. RA002132, is subject to disciplinary action by the MREAC in accordance with the relevant provisions of Chapter 621, RSMo Cum. Supp. 2008, and Chapter 339, RSMo, as amended.

The parties stipulate and agree that the disciplinary order agreed to by the MREAC and Keithley in Part III herein is based only on the agreement set out in Parts I & II herein. Keithley understands that the MREAC may take further disciplinary action against him 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

Based upon the foregoing, the MREAC and Keithley herein jointly stipulate to the following:

1. The MREAC was established pursuant to § 339.507.1, RSMo (Cum. Supp. 2007), for the purpose of executing and enforcing the provisions of §§ 339.500 through 339.549, RSMo, as amended.

2. Keithley is certified by the MREAC as a state-certified residential real estate appraiser, license number RA002132. Keithley's certification is, and was at all relevant times hereto, current and active.

3. On or about October 31, 2004, Keithley prepared a Uniform Residential Appraisal Report for certain real property commonly described as 672 NE Rushbrook Dr., Lee's Summit, MO 64064-1628 ("the subject appraisal report").

4. Following an administrative review of the subject appraisal report, the MREAC has found a number of deficiencies, in violation of USPAP Standards Rules present in the subject appraisal report. Such material deficiencies are listed immediately below:

a. The four comparable sales included in Sales Comparison approach analysis were properties from neighborhoods outside of the subject's neighborhood, three of which are located in the state of Kansas, without explaining why appropriate comparable sales from the subject's subdivision were not used;

b. Keithley neglected to report long listing history of property during period of 4/26/2001 – 12/31/2004, including the time when appraisal occurred, during which time the subject property was on market for approximately 476 days. The listing price was initially set at \$1,595,000 but was changed to \$3,500,000 immediately prior to appraisal, only to be reduced immediately after the appraisal;

c. Keithley calculated the square footage of the subject property by including below-grade area, resulting in reported square footage that is more than twice actual amount;

d. In the Sales Comparison Analysis, although Keithley supported adjustments made to comparable sale values in his addendum to the appraisal report, the support given did not adequately justify the adjustments made.

II.

Joint Statements and Conclusions of Law

1. Section 339.532.2, RSMo, states in part that:

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) ...[G]ross negligence... 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;

(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;

2. Section 339.535 states that 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.

3. The preparation of the subject appraisal report was to be in compliance with the Uniform Standards of Professional Appraisal Practice, 2004 edition. The pertinent provisions of USPAP are cited below.

4. USPAP Standards Rule 1-1 states that “in developing a real property appraisal, an appraiser must:

(a) – be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal;

(b) – not commit a substantial error of omission or commission that significantly affects an appraisal; and,

(c) - not render appraisal services in a careless or negligent manner, such as by making a series of errors that, although individually might not significantly affect the results of an appraisal, in the aggregate affects the credibility of those results.”

5. USPAP Standards Rule 1-4 states in pertinent part that “in developing a real property appraisal, an appraiser must collect, verify, and analyze all information applicable to the appraisal problem, given the scope of work identified in accordance with Standards Rule 1-2(f):

1-4(a) – “When a sales comparison approach is applicable, an appraiser must analyze such comparable sales data as are available to indicate a value conclusion.

(b) – “When a cost approach is applicable, an appraiser must:
(i) develop an opinion of site value by an appropriate appraisal method or technique;
(ii) analyze such comparable cost data as are available to estimate the cost new of the improvements (if any).”

6. USPAP Standards Rule 1-5 states that “in developing a real property appraisal, when the value opinion to be developed is market value, an appraiser must, if such information is available to the appraiser in the normal course of business:

(a) – analyze all agreements of sale, options, or listings of the subject property current as of the effective date of the appraisal; and,

(b) – analyze all sales of the subject property that occurred within the three (3) years prior to the effective date of the appraisal.”

7. USPAP Standards Rule 2-1 states in pertinent part that “in reporting the results of a real property appraisal, an appraiser must communicate each analysis, opinion, and conclusion in a manner that is not misleading. Each written or oral real property appraisal report must:

- (a) – clearly and accurately set forth the appraisal in a manner that will not be misleading;
- (b) – contain sufficient information to enable the intended users of the appraisal to understand the report properly.”

8. USPAP Standards Rule 2-2(b) states in pertinent part that “the content of a Summary Appraisal Report must be consistent with the intended use of the appraisal and, at a minimum...:

- (ix) – summarize the information analyzed, the appraisal procedures followed, and the reasoning that supports the analyses, opinions, and conclusions.”

9. Cause exists under § 339.532.2 (6), (7) & (10), RSMo, to discipline Keithley’s certificate because in preparing the subject appraisal report, Keithley: obtained all of his four comparable sales from distant neighborhoods, three of which were from a different state, without providing adequate support for doing so; did not consider appropriate comparable sales from immediate neighborhood; failed to report subject property’s listing history from April 26, 2001 through the date of the appraisal, where listing price changed from initial amount of \$1,595,000 to \$3,500,000 at the time of the appraisal; and, calculated square footage of subject property by including below-grade area, resulting in reported square footage that is more than twice actual amount, all in violation of § 339.535, RSMo, and USPAP S.R. 1-1(a) – (c).

10. Cause exists under §§ 339.532.2 (6), (7) & (10), RSMo, to discipline Keithley’s certificate because in preparing the subject appraisal report, Keithley: did not use comparable sales data from subject property’s immediate area in the sales comparison

approach without providing adequate support for doing so; selected comparable sales outside the subdivision and state in the sales comparison approach; failed to support land value in the cost approach, all in violation of § 339.535, RSMo, and USPAP S.R. 1-4(a) and (b)(i), (ii).

11. Cause exists under § 339.532.2 (6), (7) & (10), RSMo, to discipline Keithley's certificate because in preparing the subject appraisal report, Keithley neglected to mention or address the subject property's extensive listing history, including approximately 476 days on market in the three years prior to the appraisal, where the listing price changed from an initial amount of \$1,595,000 to \$3,500,00 in the time immediately surrounding the appraisal, in violation of § 339.535, RSMo, and USPAP S.R. 1-5.

12. Cause exists under § 339.532.2 (6), (7) & (10), RSMo, to discipline Keithley's certificate because in preparing the subject appraisal report, Keithley used comparable sales from alternative subdivisions; miscalculated the property's square footage; and, neglected to sufficiently explain or support adjustments made in the sales comparison approach, in violation of § 339.535, RSMo, and USPAP S.R. 2-1(a) & (b).

13. Cause exists under § 339.532.2 (6), (7) & (10), RSMo, to discipline Keithley's certificate because in preparing the subject appraisal report, Keithley: provided insufficient information to justify his use of comparable sales from a different state; neglected to support adjustments made in the sales comparison approach; and,

neglected to report or consider the subject property's extensive listing history, all in violation of § 339.535, RSMo, and USPAP S.R. 2-2(b)(ix).

14. Cause exists under § 339.532.2 (6), (7) & (10), RSMo, to discipline Keithley's certificate because in preparing the subject appraisal report, Keithley: performed this appraisal; neglected a substantial listing history reflecting a wide range of listing prices, which became exceedingly inflated during the period immediately surrounding the appraisal; and, miscalculated the square footage total for the dwelling that is more than double the actual amount, all in violation of § 339.535, RSMo, and USPAP requirements.

15. Cause exists under §339.532.2(5), RSMo, to discipline Keithley's license because in preparing the subject appraisal report, Keithley permitted the presence of the above-mentioned material deficiencies, reflecting gross negligence in the performance of the functions or duties of a profession licensed or regulated by §§339.500 to 339.549, RSMo., based on Keithley neglecting to review the subject property's listing history, including below-grade area in gross living area, and neglecting to consider appropriate comparable sales from the immediate neighborhood.

16. Cause exists under §339.532.2(9), RSMo, to discipline Keithley's license because in preparing the subject appraisal report, Keithley permitted the presence of the above-mentioned material deficiencies, reflecting negligence or incompetence in developing an appraisal, in preparing an appraisal report, and in communicating an appraisal.

III.

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. **Keithley's certification is suspended, followed by a period of probation.**

Keithley's certification as a state-certified residential real estate appraiser, no. RA002132, is hereby SUSPENDED for a period of THIRTY (30) DAYS, such suspension to begin on the Effective Date of this agreement. After this THIRTY (30) day period of suspension, Keithley's certification shall immediately thereafter be placed on PROBATION for a period of THREE (3) YEARS. The periods of suspension and probation shall constitute the "disciplinary period." During the period of suspension, Keithley shall not be entitled to practice as a state-certified residential real estate appraiser, pursuant to Chapter 339, RSMo. During the period of probation, Keithley shall be entitled to practice as a state-certified real estate appraiser under Chapter 339, RSMo, provided Keithley 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. Keithley shall submit written reports to the MREAC by no later than January 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 January 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. Keithley is responsible for assuring that the reports are submitted to and received by the MREAC.

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

C. During the period of suspension, Keithley shall not sign appraisal reports in any capacity. During the period of probation, Keithley shall not sign appraisal reports as a supervising appraiser.

D. During the disciplinary period, Keithley 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, Keithley shall

advise each trainee real estate appraiser working under him 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.

E. During the disciplinary period, Keithley 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. Keithley shall notify the MREAC in writing of any change in address or telephone number within 15 days of a change in this information.

F. Keithley 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.

G. During the disciplinary period, Keithley 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 Keithley'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.

H. Keithley 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.

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

J. If, at any time within the disciplinary period, Keithley 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 Keithley shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the MREAC determines that Keithley 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 Keithley'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 Keithley of Chapter 339,

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

8. 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.

9. 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 620, RSMo, as amended.

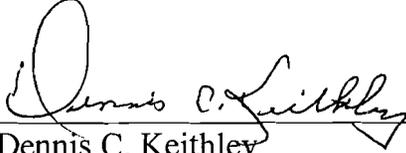
10. Keithley, together with his partners, heirs, assigns, agents, employees, representatives and attorneys, does hereby waive, release, acquit and forever discharge the MREAC, its respective members, employees, agents and attorneys including former members, employees, agents and attorneys, of, or from 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.

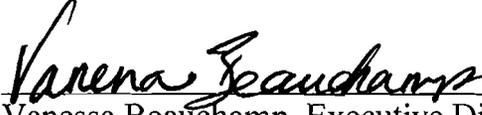
11. Keithley understands that he may, either at the time the Settlement Agreement is signed by all parties, or within fifteen days thereafter, submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Keithley's certification. If Keithley desires the Administrative Hearing Commission to review this Settlement Agreement, Keithley 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.

12. The "Effective Date" of this Settlement Agreement will be November 1, 2010.

LICENSEE


Dennis C. Keithley
Date: 9/30/2010

Missouri Real Estate Appraisers
Commission


Vanessa Beauchamp, Executive Director
Date: 10-6-10

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