

SETTLEMENT AGREEMENT
BETWEEN
MISSOURI REAL ESTATE APPRAISERS COMMISSION
AND
JACK DELANEY

Jack Delaney (“Delaney”) and the Missouri Real Estate Appraisers Commission (“MREAC”) enter into this Settlement Agreement for the purpose of resolving the question of whether Delaney’s certification as a state-certified residential real estate appraiser, no. RA003148, 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 Delaney 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.

Delaney 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

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

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 to a disciplinary hearing before the MREAC at which time Delaney 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, Delaney 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.

Delaney 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. Delaney stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the MREAC that Delaney's certification as a state-certified residential appraiser, certificate no. RA003148, is subject to disciplinary action by the MREAC in accordance with the relevant provisions of Chapter 621, RSMo, and §§ 339.500 through 339.549, RSMo, as amended.

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

Delaney 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 and Conclusions of Law

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

1. Jack Delaney is certified by the MREAC as a state-certified residential appraiser, no. RA003148. Delaney's license was at all times relevant herein current and active.
2. On or around January 27, 2009, Delaney prepared an appraisal report for commercial property located at 1801 South Baltimore, Kirksville, MO 63501 ("the Baltimore Appraisal Report").
3. Missouri regulation 20, CSR 2245-9.010 (3)(B), states:

"State-certified residential real estate appraisers may perform appraisals on residential real estate of one to four (1-4) residential units without regard to transaction value or complexity and may perform appraisal consulting in the area of residential real estate, if, and only if, performed in compliance with all state and federal laws, rules and regulations pertaining to the appraisal assignment. This designation permits the appraisal of vacant or unimproved land that may be utilized for one to four- (1-4) family purposes. This certification does not permit the appraisal of subdivisions or of agricultural real estate. Individual parcels of property located within a residential subdivision shall be considered residential real estate. For all other appraisals, the appraisal report shall be signed by the state-

certified residential real estate appraiser and a state-certified general real estate appraiser . . .”

4. Delaney violated Rule 20 CSR 2235-9.010 (3)(B), by performing commercial appraisals on the Baltimore Appraisal Report when his certificate only permits residential real estate appraisals.

5. The preparation of the Baltimore Appraisal Report was to be prepared in compliance with the Uniform Standards of Professional Appraisal Practice, 2008 edition (“USPAP”). The cited provisions of the USPAP, 2008 edition, are attached hereto as Exhibit A.

6. Based on the following errors and omissions in preparation of the Baltimore Appraisal Report, Delaney is in violation of § 339.535, RSMo; the USPAP Ethics Rule; the USPAP Competency Rule; the USPAP Scope of Work Rule; USPAP Standards Rules 1 and 2; and USPAP standards rule 1-1(a), (b) and (c), 1-2 (a), (b), (c), (e) and (h), 1-3 (b), 1-4 (a), (b) and (c), 1-5 (a) and (b), 1-6 (a) and (b), 2-1 (a), (b) and (c), and 2-2 (b) (i)-(xi):

- i. Failed to identify the intended users;
- ii. Failed to identify the intended use of the real property;
- iii. Failed to give a definition of value or cite source;
- iv. Failed to identify the type of report;
- v. Failed to use proper terminology as required in Statement 3 for retrospective appraisal reports;

- vi. Failed to provide a signed certification;
- vii. Failed to provide an appropriate scope of work;
- viii. Failed to employ appropriate methods or techniques of valuation in the cost, market and income approaches;
- ix. Failed to correctly analyze the comparable sales;
- x. Failed to perform a correct sales comparison approach to value by not adequately or correctly analyzing the comparable sales;
- xi. Failed to identify that he is a residential certified appraiser as required by statute;
- xii. Failed to appropriately identify the physical characteristics of the subject property such as the property's acreage;
- xiii. Failed to provide the highest and best use analysis;
- xiv. Failed to discuss the retrospective value opinion or any compliance with Statement 3;
- xv. Failed to disclose extraordinary assumptions used in the assignment;
- xvi. Failed to analyze all agreements of sale, options, and listings within the prior three years of the subject property as of the effective date of the appraisal;
- xvii. Failed to utilized proper methods for comparison and adjustments;

- xviii. Failed to explain why the Cost Approach was excluded or why it would not be a credible approach;
- xix. Failed to explain why the Income Approach was excluded or why it would not be a credible approach;
- xx. Failed to date the report and, thereby, created the misleading impression that the report was prepared on or around the effective date when it was not; and
- xxi. Failed to indicate the assignment requested and that he estimated a retrospective value, not a current value.

7. 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.

8. Based on Delaney's conduct as stated above, cause exist to discipline his license pursuant to § 339.532.2(5), (6), (7), (8), (9), (10) and (13), RSMo Cum. Supp. 2009, which state:

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, 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 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[.]

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. 2009.

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

Delaney's certification as a state-certified residential appraiser is hereby SUSPENDED for a period of THREE (3) MONTHS, and 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, Delaney shall not be entitled to practice as a state-certified residential appraiser pursuant to §§ 339.500 through 339.549, RSMo. During the period of probation, Delaney shall be entitled to practice as a state-certified residential appraiser under §§ 339.500 through 339.549, RSMo, provided Delaney 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. Delaney shall submit written reports to the MREAC by no later than July 1 and January 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 July 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. Delaney is responsible for assuring that the reports are submitted to and received by the MREAC.

B. During the disciplinary period, Delaney 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 July 1 and January 1 during each year of the disciplinary period. The first log shall be

submitted on or before July 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. Delaney is responsible for assuring that the logs are submitted to and received by the MREAC. Upon MREAC request, Delaney shall submit copies of his work samples for MREAC review.

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

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

F. Delaney 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, Delaney 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 Delaney'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. Delaney 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. Delaney 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, Delaney 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 Delaney shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the MREAC determines that Delaney 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 Delaney'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 Delaney 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. Delaney 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. Delaney, 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

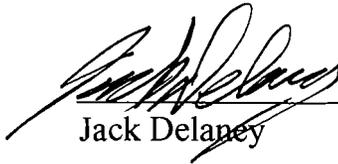
members, employees, agents and attorneys, of, or from any liability, claim, actions, causes of action, fees, costs, expenses and compensation, including, but not limited to, any claim for attorney's fees and expenses, whether or not now known or contemplated, including, but not limited to, any claims 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. Delaney 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 Delaney's certification. If Delaney desires the Administrative Hearing Commission to review this Settlement Agreement, Delaney 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 65102.

13. If Delaney 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 Delaney's certification. If

Delaney does not request review by the Administrative Hearing Commission, this Settlement Agreement goes into effect 15 days after the document is signed by the Executive Director of the MREAC.

LICENSEE



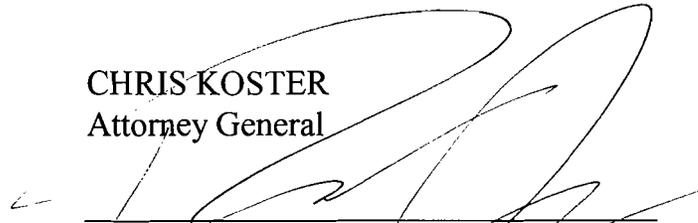
Jack Delaney Date 2-8-11

MISSOURI REAL ESTATE
APPRAISERS COMMISSION



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