

SETTLEMENT AGREEMENT
BETWEEN
MISSOURI REAL ESTATE APPRAISERS COMMISSION
AND
JAMES HAND

James Hand ("Licensee") and the Missouri Real Estate Appraisers Commission ("MREAC") enter into this settlement agreement for the purpose of resolving the question of whether Licensee's certification as a state-certified residential real estate appraiser will be subject to discipline.

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 ("AHC") regarding cause to discipline the Licensee's certification, and, additionally, the right to a disciplinary hearing before the MREAC under § 621.110, RSMo Supp. 2013. The parties jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo Supp. 2013.

Licensee acknowledges that Licensee understands the various rights and privileges afforded Licensee by law, including the right to a hearing of the charges against Licensee; the right to appear and be represented by legal counsel; the right to have all charges against Licensee proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against Licensee; the right to present evidence on Licensee's own

¹ All statutory references are to Missouri Revised Statutes 2000, as amended, unless otherwise indicated.

behalf at the hearing; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against Licensee and, subsequently, the right to a disciplinary hearing before the MREAC at which time Licensee may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against Licensee's certification. Being aware of these rights provided him by operation of law, Licensee 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 Licensee.

Licensee acknowledges that Licensee has received a copy of the documents relied upon by the MREAC in determining there was cause to discipline Licensee's certification, along with citations to law and/or regulations the MREAC believes were violated.

For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the MREAC that Licensee's certification, numbered RA002905, is subject to disciplinary action by the MREAC in accordance with the provisions of Chapter 621 and §§ 339.500 to 339.549, RSMo, as amended.

Joint Stipulation of Fact and Conclusions of Law

1. The MREAC is an agency of the state of Missouri created and established pursuant to § 339.507, RSMo Supp. 2013, for the purpose of licensing

all persons engaged in the practice of real estate appraisal in this state. The MREAC has control and supervision of the licensed occupations and enforcement of the terms and provisions of §§ 339.500 to 339.549, RSMo, as amended.

2. Licensee, James Hand, holds a certification from the MREAC as a state-certified residential real estate appraiser, license number RA002905. The MREAC issued Licensee's certification on February 10, 1995. Licensee's certification expires June 30, 2014. Licensee's Missouri certification was at all times relevant herein, and is now, current and active.

3. On November 15, 2007, Licensee signed an appraisal report of real property located at 95 P Lake Shore Drive, Lake Lotawana, Missouri. In the 95 P Lake Shore Drive appraisal, Licensee failed to use similar two bedroom, non-lake front properties for comparable sales even though such sales were available in the area. The comparable sales used were far superior, including lake-front property, panoramic views, deep-water boat docks, and full basements. Licensee did not adequately support his appraisal value in that he misrepresented physical characteristics of the property and improvements thereon and he used inappropriate comparable sales.

4. Licensee's 95 P Lake Shore Drive appraisal does not comply with several provisions of the Uniform Standards of Professional Appraisal Practice, 2006 Edition (USPAP):

- a. Licensee's 95 P Lake Shore Drive appraisal did not comply with USPAP Standards Rule 1-1(a) because Licensee was not aware of, did not understand and did not correctly apply those recognized methods and techniques that are necessary to produce a credible appraisal in that Licensee failed to properly analyze the subject property's second tier lake location and its impact in the marketplace.
- b. Licensee's 95 P Lake Shore Drive appraisal did not comply with USPAP Standards Rule 1-1(b) because Licensee committed a substantial error of omission or commission that significantly affected the appraisal in that Licensee failed to adequately describe the subject property's location and inferior appeal to other properties with lake frontage and water access. Licensee committed multiple errors regarding site valuation and use of inappropriate comparable sales, such as those with lake frontage and water access, which led to a misleading value.
- c. Licensee's 95 P Lake Shore Drive appraisal did not comply with USPAP Standards Rule 1-2(e) because Licensee did not identify characteristics of the property that are relevant to the purpose and intended use of the appraisal in that the subject property has a lower than typical effective age with no mention by

Licensee of updates and/or remodeling to the home. Licensee also did not conduct proper analysis of second-tier lake property versus lakefront property.

- d. Licensee's 95 P Lake Shore Drive appraisal did not comply with USPAP Standards Rule 1-4(a) because in using the sales comparison approach, Licensee did not analyze appropriate sales comparison data to indicate a value conclusion in that Licensee improperly utilized superior lakefront properties to compare to an inferior second-tier property without properly analyzing the locational affects, as well as the subject's condition and the utility of a two bedroom home.
- e. Licensee's 95 P Lake Shore Drive appraisal did not comply with USPAP Standards Rule 1-4(b) because in using the cost approach, Licensee did not develop an opinion of site value by an appropriate appraisal method or technique, analyze comparable cost data available to estimate the cost new of the improvements and analyze comparable data available to estimate the difference between the cost new and present worth of the improvements in that Licensee's site value was unsupported and inflated.

- f. Licensee's 95 P Lake Shore Drive appraisal did not comply with USPAP Standards Rule 2-1(a) because Licensee's appraisal report did not clearly and accurately set forth the appraisal in a manner that is not misleading.
- g. Licensee's 95 P Lake Shore Drive appraisal did not comply with USPAP Standards Rule 2-1(b) because Licensee's appraisal report did not contain sufficient information to enable the intended users of the appraisal to understand the report properly.
- h. Licensee's 95 P Lake Shore Drive appraisal did not comply with USPAP Standards Rule 2-2(b)(iii) because Licensee's summary appraisal report did not summarize information sufficiently to identify the real estate involved in the appraisal, including the physical and economic property characteristics relevant to the assignment.
- i. Licensee's 95 P Lake Shore Drive appraisal did not comply with USPAP Standards 1 and 2, generally, because Licensee utilized superior lakefront properties with more bedrooms, creating a not credible and a misleading report. The appraisal contained minimal adjustments for the site despite the differences and they were unsupported in the appraisal report. There were

multiple properties in the area with similar appeal that should have been used as comparable sales rather than those of superior value and appeal. Additionally, the support for the subject's lower than typical average age was not provided in the appraisal report. There was no listing of renovations and/or remodeling provided in the appraisal report. All these factors, and those discussed above, combine to create a not credible and a misleading report that is in violation of USPAP Standards 1 and 2.

5. Licensee's conduct, as stipulated to herein, constitutes misconduct in the performance of the duties of a certified residential real estate appraiser for which the MREAC has cause to discipline Licensee's certification under § 337.532.2(5), RSMo.

6. Licensee's conduct, as stipulated to herein, constitutes a failure to comply with the requirements of USPAP for which the MREAC has cause to discipline Licensee's certification under § 337.532.2(7), RSMo.

7. Licensee's conduct, as stipulated to herein, constitutes a violation of the professional trust or confidence Licensee owed to his client, his colleagues, and to the public, generally, for which the MREAC has cause to discipline Licensee's certification under § 337.532.2(14), RSMo.

8. In summary, cause exists for the MREAC to take disciplinary action against Licensee's certification under § 337.532.2(5), (7), and (14), RSMo, 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, 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;

...

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

...

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

Joint Agreed Disciplinary Order

9. 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 §§ 621.045.4 and 621.110, RSMo Supp. 2013.

10. **Licensee's certification is on probation.** Licensee's certification as a state-certified residential real estate appraiser is hereby placed on PROBATION for a period of ONE YEAR. The period of probation shall constitute the "disciplinary period." During the disciplinary period, Licensee shall be entitled to practice as a state-certified residential real estate appraiser under §§ 339.500 through 339.549, RSMo, as amended, provided Licensee adheres to all the terms of this agreement.

11. **Terms and conditions of the disciplinary period.** The terms and conditions of the disciplinary period are as follows:

A. Licensee shall submit written reports to the MREAC by no later than January 15, April 15, July 15 and October 15, 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 report shall be due by July 15, 2014. Licensee is responsible for assuring that the reports are submitted to and received by the MREAC.

B. During the disciplinary period, Licensee shall maintain a log of all appraisal assignments as required by 20 CSR 2245-2.050. A true and accurate copy of which shall be submitted to the MREAC every three (3) months after the disciplinary period goes into effect with the written reports required under subparagraph A., above. Licensee is responsible for assuring that the logs are submitted to and received by the MREAC. Upon MREAC

request, Licensee shall submit copies of his Missouri work samples for MREAC review. Licensee shall be required to submit copies of work samples from other states only when the submitted log does not contain at least two Missouri appraisals.

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

D. During the disciplinary period, Licensee 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, Licensee 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. Whenever during the disciplinary period Licensee provides others with a copy of his certification as a Missouri state-certified residential real estate appraiser, Licensee shall provide the most recent version of her certification issued by the MREAC.

F. During the disciplinary period, Licensee 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. Licensee

shall notify the MREAC in writing of any change in address or telephone number within 15 days of a change in this information.

G. Licensee 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.

H. During the disciplinary period, Licensee 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. Traffic infractions shall not be considered a violation of this term. Any cause to discipline Licensee'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.

I. Licensee 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.

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

K. If, at any time within the disciplinary period, Licensee 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 uncertified status or unknown whereabouts shall not be deemed or taken as any part of the disciplinary period.

12. Upon the expiration of the disciplinary period, the certification of Licensee shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the MREAC determines that Licensee 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 Licensee's certification.

13. 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.

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

15. 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.

16. If any alleged violation of this Settlement Agreement occurred during the disciplinary period, the parties agree that the MREC 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. MREAC agrees and stipulates that the MREAC has continuing jurisdiction to hold a hearing to determine if a violation of this Settlement Agreement has occurred.

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

18. 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.

19. The parties to this Settlement Agreement understand that the MREAC will maintain this Settlement Agreement as an open record of the MREAC as provided in Chapters 324, 339, and 610, RSMo.

20. Licensee, together with Licensee's heirs and assigns, and Licensee's attorneys, do hereby waive, release, acquit and forever discharge the MREAC, its respective 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 case, its settlement, 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 to be void or unenforceable.

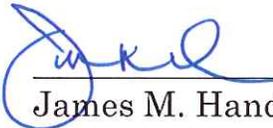
21. Licensee understands that he may, either at the time the Settlement Agreement is signed by all parties, or within fifteen days thereafter, submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Licensee's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

Administrative Hearing Commission, Truman State Office Building,

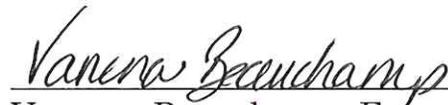
Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri
65102.

22. If Licensee 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 Licensee's certification. If the Administrative Hearing Commission issues an order stating that the Settlement Agreement does not set forth cause for discipline, then the MREAC may proceed to seek discipline against Licensee as allowed by law. If Licensee 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.

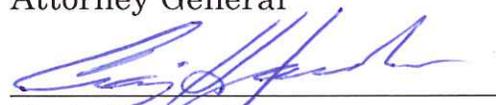
LICENSEE


James M. Hand
Date: 1 MAY 14

MISSOURI REAL ESTATE
APPRAISERS COMMISSION


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