

SETTLEMENT AGREEMENT
BETWEEN
MISSOURI REAL ESTATE APPRAISERS COMMISSION
AND
JOHN M. HOWARD

John M. Howard, (“Howard”), and the Missouri Real Estate Appraisers Commission, (“MREAC”), enter into this Settlement Agreement for the purpose of resolving the question of whether Howard’s certification as a state-certified general real estate appraiser, license number RA001043, 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. 2008. The MREAC and Howard 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.

Howard 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

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

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

Howard 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. Howard stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the MREAC that Howard's certification as a state-certified general real estate appraiser, license number RA001043, 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 §§ 339.500 to 339.549, RSMo, as amended.

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

1. The MREAC is an agency of the State of Missouri created pursuant to section 339.507 for the purpose of executing and enforcing the provisions of Chapter 339, RSMo.
2. Howard is and was at all times relevant herein, licensed as a state-certified general real estate appraiser, license number RA001043.
3. Howard's license is current and active.
4. On or around June 23, 2008, Howard submitted an Application to Renew real estate appraiser certification online for the 2008-2010 license period.
5. As part of the online renewal process, Howard read and agreed in the affirmative to the following statement: "Since my last renewal, I have completed the mandatory number of hours of continuing education needed to renew my license or certification."
6. Howard was required to obtain 28 continuing education hours during the 2006-2008 license period which ended June 30, 2008.

7. On August 1, 2008, the MREAC sent Howard a letter informing Howard that his license had been randomly selected for a continuing education audit for the 2006-2008 license period.

8. Howard failed to reply to the letter by September 1, 2008.

9. By failing to reply, Howard violated 20 CSR 2245-8.040, which states:

(1) Licensees shall maintain evidence of course participation or course completion certificates for the period set for appraisal file retention. Such evidence or certificate shall be submitted upon request by the commission.

10. On or about October 23, 2008, MREAC sent a follow-up letter to Howard.

11. Howard was required to obtain 28 continuing education hours during the 2006-2008 license period, which ended on June 30, 2008.

12. In response to the October 23, 2008, Howard submitted proof of attending the following continuing education hours:

A. Seven hours on September 26, 2008, National USPAP Equivalent Course;

B. Fourteen hours on October 18, 2008, for Residential Market Analysis and Highest & Best Use;

C. Seven hours on October 22, 2008, for Online FHA and The Appraisal Process.

13. Howard obtained 28 hours of continuing education after the deadline date of June 30, 2008, and after he submitted his renewal application on June 23, 2008.

14. As a licensed real estate appraiser, Howard was required to satisfy state regulation 20 CSR 2245-8.010 which provides, in pertinent part:

(1) Each licensee who holds a certificate or license shall complete, during the two (2)-year license period prior to renewal, as a condition precedent to certification or license renewal, the required number of hours of real estate appraisal instruction approved for continuing education credit by the Missouri Real Estate Appraisers Commission as specified in section (2) of this rule. Licensees shall maintain their evidence of course participation or course completion certificates for the period set for appraisal file retention. Such evidence shall be submitted upon request by the commission.

(2) Licensees are required to complete twenty-eight (28) hours of continuing education during the two (2)-year renewal cycle. The commission may require specific courses of continuing education. A licensee shall provide verification of completion of continuing education by affidavit at the time of renewal. The affidavit shall contain a truthful statement of approved courses by the commission of continuing education taken by the licensee.

...

(11) All licensees of the state of Missouri shall complete, for continuing education credit, the seven (7) hour national Uniform Standards of Professional Appraisal Practice (USPAP) updated course or its equivalent during each renewal cycle. . . .

15. The 28 hours of continuing education submitted by Howard, including 7 hours of USPAP training, were all obtained after the two year license period ended on June 30, 2008, in violation of 20 CSR 2245-8.010.

16. Howard did not obtain the required continuing education hours, or failed to maintain and/or submit evidence of successfully completing the required continuing education hours as required by MREAC.

17. By failing to provide true and correct information to the MREAC on his renewal application regarding his completion of continuing education, Howard violated § 339.530, RSMo, which states:

1. As a prerequisite of renewal of certification or licensure, a state-certified real estate appraiser or state-licensed real estate appraiser shall present evidence satisfactory to the commission of having met the continuing education requirements as provided in this section. The basic continuing education requirements for renewal of certification or licensure shall be the completion by the state-certified real estate appraiser or state-licensed real estate appraiser, during the immediately preceding term of certification or licensure, of continuing education as prescribed by the appraiser qualifications board and approved by the commission.

18. Based on Howard's conduct as alleged herein, cause exists to discipline his certification as a state-certified real estate appraiser under §§ 339.532.2, RSMo, which provides 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:

(1) Procuring or attempting to procure a certificate or license pursuant to section 339.513 by knowingly making a false statement, submitting false information, refusing to provide

complete information in response to a question in an application for certification or licensure, or through any form of fraud or misrepresentation;

(2) Failing to meet the minimum qualifications for certification or licensure or renewal established by sections 339.500 to 339.549;

...

(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, 621.045.3, and 621.110, RSMo.

1. **Howard's certification is on probation.** Howard's certification as a state-certified general real estate appraiser is hereby placed on PROBATION for a period of two (2) years. The period of probation shall constitute the "disciplinary period." During the disciplinary period, Howard shall be entitled to practice as a state-certified general real estate appraiser under §§ 339.500 to 339.549, RSMo, as amended, provided Howard adheres to all the terms of this agreement.

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

A. Howard shall submit written reports to the MREAC by no later than December 1, 2009 and July 1, 2010, December 1, 2010, and July 1, 2011, stating truthfully whether there has been compliance with all terms and conditions of this Agreement. Each written report shall be submitted no earlier than 30 days prior to the respective due date. Howard is responsible for assuring that the reports are submitted to and received by the MREAC.

B. Howard must obtain 28 hours of continuing education during the disciplinary period, which shall be in addition to and not count toward the 28 hours of continuing education required to be completed during the 2008-2010 license period in order to renew in 2010.

C. The hours earned on September 26, 2008, October 18, 2008, and October 22, 2008, as listed in paragraph 12 above, will be deemed by the MREAC to fulfill Howard's requirement to earn 28 hours during the disciplinary period, but as such, shall not be applied to his 2010 renewal.

D. During the disciplinary period, Howard 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 July 1

during each year of the disciplinary period. Each log submitted shall be current to at least 30 days prior to the respective due date. Howard is responsible for assuring that the logs are submitted to and received by the MREAC. Upon MREAC request, Howard shall submit copies of his work samples for MREAC review.

E. During the disciplinary period, Howard 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 Agreement, Howard 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.

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

G. Howard 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, Howard 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 Howard'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. Howard 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. Howard 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, Howard 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 Howard shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the MREAC determines that Howard 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 Howard'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 Howard 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. Howard 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 324, 339, and 610, RSMo, as amended.

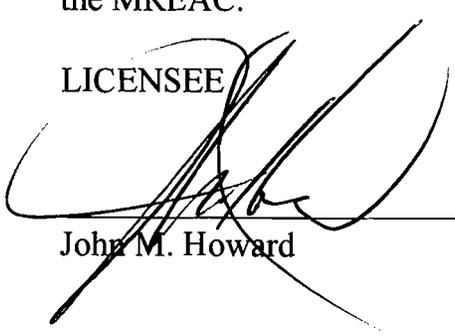
11. Howard, together with his partners, heirs, assigns, agents, employees, representatives and attorneys, does hereby waive, release, acquit and forever discharge the MREAC, its respective members, employees, agents and attorneys including former members, employees, agents and attorneys, of, or from 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. Howard 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 Howard's certification. If Howard desires the Administrative Hearing Commission to review this Settlement Agreement, Howard 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.

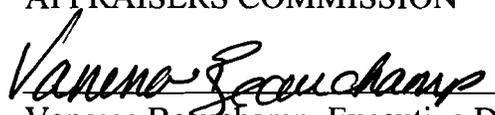
13. If Howard requests review, this Settlement Agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the Settlement Agreement sets forth cause for disciplining Howard's certification. If Howard does not request review by the Administrative Hearing Commission, the Settlement Agreement goes into effect 15 days after the document is signed by the Executive Director of the MREAC.

LICENSEE


John M. Howard

Date

MISSOURI REAL ESTATE
APPRAISERS COMMISSION


Vanessa Beauchamp, Executive Director

Date: 11/2/09

CHRIS KOSTER
Attorney General


YAMINI A. LAKS
Assistant Attorney General
Missouri Bar No. 61452

Supreme Court Building
207 West High Street
P.O. Box 899
Jefferson City, MO 65102
Telephone: 573-751-9623
Telefax: 573-751-5660

Attorneys for the Missouri Real Estate
Appraisers Commission