

SETTLEMENT AGREEMENT
BETWEEN
MISSOURI REAL ESTATE APPRAISERS COMMISSION
AND
MARILYN L. HEMBREE

Marilyn L. Hembree (“Hembree”) and the Missouri Real Estate Appraisers Commission (“MREAC”) enter into this Settlement Agreement for the purpose of resolving the question of whether Hembree’s certification as a state-certified residential real estate appraiser, certificate no. 2003002458, 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 Supp. 2011. The MREAC and Hembree jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo Supp. 2011.

Hembree acknowledges that she understands the various rights and privileges afforded her by law, including the right to a hearing of the charges against her; 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 her at the hearing; the right to present evidence on her behalf at the hearing; the right to a decision upon the record of the hearing by a fair and

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

impartial administrative hearing commissioner concerning the charges pending against her; 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 Hembree 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 her by law, Hembree 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 her.

Hembree acknowledges that she 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. Hembree stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the MREAC that Hembree's certification as a residential real estate appraiser, certificate no. 2003002458, 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 Hembree in Part II herein is based only on the agreement set out in Part I

herein. Hembree understands that the MREAC may take further disciplinary action against her 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 Hembree herein jointly stipulate to the following:

1. The Missouri Real Estate Appraisers Commission (“MREAC”) was established pursuant to § 339.507, RSMo. Cum. Supp. 2009, for the purpose of executing and enforcing the provisions of §§ 339.500 through 339.549, RSMo, as amended.
2. Hembree is certified by the MREAC as a state-certified residential real estate appraiser, certificate no. 2003002458.
3. Hembree’s residential real estate appraiser certification was originally issued by the MREAC on February 3, 2003, and is scheduled to expire on June 30, 2012.
4. Hembree’s residential real estate appraiser certification has been and is now current and active at all time relevant herein.

Applicable Laws

5. Section 339.532.2, RSMo. Cum. Supp. 2009, provides in 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 her 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 (“USPAP”) 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;

....

(14) Violation of any professional trust or confidence

6. Section 339.535, RSMo, as amended, 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 board of the appraisal foundation.

The Appraisal Report of 103 Rocky Circle, Carl Junction, Missouri

7. On or about February 26, 2009, Hembree prepared and signed a residential appraisal report for real estate located at 103 Rocky Circle, Briarbrook Estates 5th Lot 8, Carl Junction, Missouri 64834-9693 (the property is referred to hereinafter as the "Subject Property" and the appraisal report is referred to hereinafter as the "Appraisal Report").

8. The effective date of the Appraisal Report was February 25, 2009.

9. In the Appraisal Report, Hembree valued the Subject Property at \$370,750.

10. Hembree was required to develop and report the results of the Appraisal Report in compliance with the Uniform Standards of Professional Appraisal Practice ("USPAP"), 2008-2009 edition (effective January 1, 2008 through December 31, 2009).

11. The Appraisal Report was prepared for Chase Bank, N.A.

12. In preparation of the Appraisal Report, Hembree made significant and substantial errors of omission and commission, including, but not limited to:

- a) Indicating that the neighborhood sales price range was from \$25,000 to \$450,000, with the predominate price being \$375,000. In actuality, based on an analysis of 2008 residential sales in Ozark Gateway MLS,

the neighborhood sales price range was from \$76,000 to \$430,000, with the mean price at \$175,611 and the median price at \$160,000;

- b) Reporting, but failing to analyze, that the Subject Property was for sale on the market in excess of 158 days during 2006 and it was listed for \$282,500, reduced to \$270,000, and then sold on May 18, 2006 for \$255,000;
- c) Failing to take into account that the average price for sales in the Briarbrook Development decreased from 2006 through 2008; and
- d) Taking into account that the Jasper County Assessor records showed that a permit for a detached garage for the Subject Property was obtained in June 2008 for \$30,000, but correspondingly failing to justify the increased appraisal price based on this improvement.

13. In the preparation of the Sales Comparison Analysis in the Appraisal Report, Hembree made significant and substantial errors of omission and commission, including, but not limited to

- a) Failing to consider and analyze that Comparable Sale #1, for instance, was sold in August 2005 for \$293,900 and sold again in April 2008 for \$307,000, which indicates a monthly price increase of .1393% (4.46%/32 months). By applying this increase to the Subject Property, the estimated value should have increased to \$266,730 (.1393% x 33

months = 4.60%, $\$255,000 \times 1.046\% = \$266,730$) plus the value of the permit for the detached garage ($\$30,000$) = $\$293,730$;

- b) Failing to consider and analyze that Comparable Sale #3 had a pool house and additional lot that housed the pool and pool house and its effect on the value of the Subject Property;
- c) Only using superior comparable sales, which fails to allow for a lower range property with which to compare the Subject Property;
- d) For Comparable Sale #1, omitting and failing to analyze an additional 800 sq. ft.;
- e) Using only superior comparable sales to that of the Subject Property when Hembree notes that she is using a bracketing method, which requires the use of an inferior comparable sale to establish a lower end of the subject value; and
- f) Noting for Comparable Sales #1, 2, and 3 that the price per square foot, based on prior sales and before adjustments are made, ranged from $\$119.74/\text{sq. ft}$ to $\$140.57/\text{sq. ft}$, but failing to apply this range to the value of the Subject Property, which would have created a price range of $\$273,845$ to $\$321,484$.

14. The Appraisal Report overestimates the value, is not credible, is misleading, and was developed and reported in violation of USPAP Standards 1 and 2.

USPAP Standard 1, regarding the development of an appraisal, provides:

In developing a real property appraisal, an appraiser must identify the problem to be solved, determine the scope of work necessary to solve the problem, and correctly complete research and analyses necessary to produce a credible appraisal.

USPAP Standard 2, regarding the reporting of an appraisal, provides:

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.

15. Based on Hembree's errors and omissions in developing and reporting the results of the Appraisal Report, Hembree failed to correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal in violation of USPAP Standard 1 and SR 1-1(a), which states:

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[.]

16. Based on Hembree's errors and omissions in developing and reporting the results of the Appraisal Report, Hembree committed substantial errors of omission and commission that significantly affected the appraisal in violation of USPAP Standard 1 and SR 1-1(b), which states:

In developing a real property appraisal, an appraiser must:

(b) not commit a substantial error of omission or commission

that significantly affects an appraisal[.]

17. Based on Hembree's errors and omissions in developing and reporting the results of the Appraisal Report Appraisal, Hembree rendered appraisal services in a careless and negligent manner in violation of USPAP Standard 1 and SR 1-1(c), which states:

In developing a real property appraisal, an appraiser must:

(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.

18. Based on Hembree's errors and omissions in developing and reporting the results of the Appraisal Report, Hembree failed to identify the characteristics of the property that are relevant to the type and definition of value and intended use of the appraisal, in violation of USPAP Standard 1 and SR 1-2(e)(i), which states:

In developing a real property appraisal, an appraiser must:

(e) identify the characteristics of the property that are relevant to the type and definition of value and intended use of the appraisal, including:

(i) its location and physical, legal, and economic attributes;

19. Based on Hembree's errors and omissions in developing and reporting the results of the Appraisal Report, Hembree failed to identify and analyze economic demand and market area trends, in violation of USPAP Standard 1 and SR 1-3(a), which states:

When necessary for credible assignment results in developing a market value opinion, an appraiser must:

(a) identify and analyze the effect on use and value of existing land use regulations, reasonably probable modifications of such land use regulations, economic supply and demand, the physical adaptability of the real estate, and market area trends[.]

20. Based on Hembree's errors and omissions in developing and reporting the results of the Appraisal Report, Hembree failed to, in using a sales comparison approach, analyze such comparable sales data as are available to indicate a value conclusion when she only used superior sales for the bracketing method of the subject, misstated the physical size of Comparable Sale #1, and omitted the use of other sale data that is more similar to the Subject Property to support a value opinion, in violation of USPAP Standard 1 and SR 1-4(a), which states:

In developing a real property appraisal, an appraiser must collect, verify, and analyze all information necessary for credible assignment results.

(a) When a sales comparison approach is necessary for credible assignment results, an appraiser must analyze such comparable sales data as are available to indicate a value conclusion.

21. Based on Hembree's errors and omissions in developing and reporting the results of the Appraisal Report, Hembree failed to, in using a cost approach method, develop and support the site value for the Subject Property, in violation of USPAP Standard 1 and SR 1-4(b), which states:

When a cost approach is necessary for credible assignment results, 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); and

(iii) analyze such comparable data as are available to estimate the difference between the cost new and the present worth of the improvements (accrued depreciation).

22. Based on Hembree's errors and omissions in developing and reporting the results of the Appraisal Report, Hembree failed to analyze any prior sales of the Subject Property that occurred within the three (3) years prior to the effective date of the appraisal, in violation of USPAP Standard 1 and SR 1-5(b), which states:

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:

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

23. Based on Hembree's errors and omissions in developing and reporting the results of the Appraisal Report, Hembree failed to reconcile the quality and quantity of data available and analyzed within the approaches used, in violation of USPAP Standard 1 and SR 1-6(a), which states:

In developing a real property appraisal, an appraiser must:

(a) reconcile the quality and quantity of data available and analyzed within the approaches used[.]

24. Based on Hembree's errors and omissions in developing and reporting the results of the Appraisal Report, Hembree failed to reconcile the applicability and relevance of the approaches, methods and techniques used to arrive at the value conclusion, in violation of USPAP Standard 1 and SR 1-6(b), which states:

In developing a real property appraisal, an appraiser must:

(b) reconcile the applicability and relevance of the approaches, methods and techniques used to arrive at the value conclusion(s).

25. Based on Hembree's errors and omissions in developing and reporting the results of the Appraisal Report, Hembree failed to clearly and accurately set forth the appraisal in a manner that would not be misleading, in violation of USPAP Standard 2 and SR 2-1(a), which states:

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[.]

26. Based on Hembree's errors and omissions in developing and reporting the results of the Appraisal Report, Hembree failed to prepare a report that contained sufficient information to enable the intended users of the appraisal to understand the report properly, in violation of USPAP Standard 2 and SR 2-1(b), which states:

Each written or oral real property appraisal report must:

(b) contain sufficient information to enable the intended users of the appraisal to understand the report properly[.]

27. Based on Hembree's errors and omissions in developing and reporting the results of the Appraisal Report, Hembree failed to summarize information sufficient to identify the real estate involved in the appraisal, including the physical and economic property characteristics relevant to the assignment, in violation of USPAP Standard 2 and SR 2-2(a)(iii), which states:

Each written real property appraisal report must be prepared under one of the following three options and prominently state which option is used: Self-Contained Appraisal Report, Summary Appraisal Report, or Restricted Use Appraisal Report.

(a) The content of a Self-Contained Appraisal Report must be consistent with the intended use of the appraisal and, at a minimum:

(iii) describe information sufficient to identify the real estate involved in the appraisal, including the physical and economic property characteristics relevant to the assignment.

28. Based on Hembree's errors and omissions in developing and reporting the results of the Appraisal Report, Hembree communicated results in a misleading manner, in violation of the Conduct provision of the USPAP Ethics Rule, which states in part:

An appraiser must not communicate assignment results in a misleading or fraudulent manner. An appraiser must not use or communicate a misleading or fraudulent report or knowingly permit an employee or other person to communicate a misleading or fraudulent report.

29. Hembree's conduct, as stipulated to herein, demonstrates incompetency, misconduct, and gross negligence in the performance of the functions and duties of a real estate appraiser, which therefore, provides cause to discipline her real estate appraiser certification pursuant to Section 339.532.2(5), RSMo.

30. Hembree's conduct, as stipulated to herein, violates standards for the development and/or communication of real estate appraisals as provided in or pursuant to §§ 339.500 to 339.549, RSMo, which therefore, provides cause to discipline her real estate appraiser certification pursuant to Section 339.532.2(6), RSMo.

31. Each of Hembree's USPAP violations, as stipulated to herein, constitutes a violation of § 339.535, RSMo, which therefore, provides cause to discipline her real estate appraiser certification pursuant to Sections 339.532.2(7) and (10), RSMo.

32. Hembree's conduct, as stipulated to herein, demonstrates a failure and refusal without good cause to exercise reasonable diligence in developing an appraisal,

preparing an appraisal report, and communicating an appraisal, which therefore, provides cause to discipline her real estate appraiser certification pursuant to Section 339.532.2(8), RSMo.

33. Hembree's conduct, as stipulated to herein, demonstrates negligence and incompetence in developing an appraisal, in preparing an appraisal report, and in communicating an appraisal, which therefore, provides cause to discipline her real estate appraiser certification pursuant to Section 339.532.2(9), RSMo.

34. Hembree's conduct, as stipulated to herein, violates the professional trust and confidence she owed to her clients, the intended users of the appraisal report, and the public, which therefore, provides cause to discipline her real estate appraiser certification pursuant to Section 339.532.2(14), RSMo.

35. Hembree's conduct, as stipulated to herein, demonstrates that Hembree rendered appraisal services in violation of the USPAP Ethics Rule, USPAP Standards 1 and 2, the USPAP Standards Rules cited in this Count, and § 339.535, RSMo, which therefore, provides cause to discipline Hembree's certification as a residential real estate appraiser pursuant to Sections 339.532.2(5), (6), (7), (8), (9), (10) and (14), RSMo.

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.

36. Hembree's certification is voluntary surrendered. Hembree's certification as a state-certified residential real estate appraiser is hereby VOLUNTARILY SURRENDERED. Hembree shall immediately return all indicia of certification to the Board. If Hembree applies for a real estate appraiser license or certification after surrender, Hembree shall be required to requalify as if an original applicant and the MREAC will not be precluded from basing its decision, wholly or partially, on the findings of fact and conclusions of law set forth in this Settlement Agreement.

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

38. 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.

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

40. 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.

41. 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.

42. Hembree, together with her 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.

43. Hembree understands that she 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 Hembree's certification. If Hembree desires the Administrative Hearing Commission to review this Settlement Agreement, Hembree may submit her request to: Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65102.

44. If Hembree 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 Hembree'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 Hembree as allowed by law. If Hembree does not request review by the Administrative Hearing Commission, this Settlement Agreement goes into effect fifteen (15) days after the document is signed by the Executive Director of the MREAC.

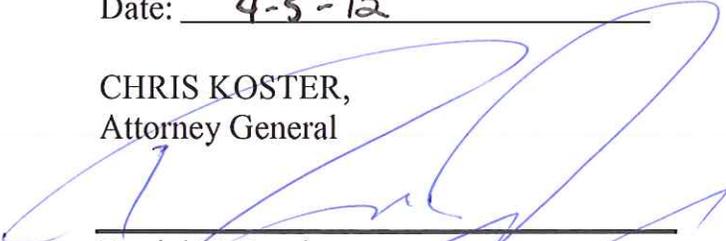
LICENSEE

Marilyn L. Hembree 3/23/11
Marilyn L. Hembree Date

**MISSOURI REAL ESTATE
APPRAISERS COMMISSION**

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