

SETTLEMENT AGREEMENT
BETWEEN MISSOURI REAL ESTATE APPRAISERS COMMISSION
AND MARY KYM CRAFT

Mary Kym Craft (Craft) and the Missouri Real Estate Appraisers Commission (MREAC) enter into this Settlement Agreement for the sole purpose of resolving the question of whether Craft's certification as a state-certified residential real estate appraiser, no. 2006005573, will be subject to discipline.¹ Pursuant to § 536.060, RSMo 2000,² 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 Craft 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.

¹ Craft relies upon legal precedent from the Appellate Courts of the State of Missouri, specifically, *State ex rel. Malan v. Huesemann*, 942 S.W.2d 424 (Mo. App. W.D. 1997) for judicial precedent that the fact of her entering into this Settlement Agreement is inadmissible in any civil action relating to the facts and circumstances as set forth in the Complaint of the MREAC.

² All statutory citations are to the 2000 Revised Statutes of Missouri unless otherwise noted.

Craft 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 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 Craft 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, Craft 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.

Craft 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. For the sole purpose of settling this dispute, Craft stipulates that the factual allegations contained in this

Settlement Agreement are true and stipulates with the MREAC that Craft's certification as a state-certified residential real estate appraiser, certificate no. 2006005573, 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 Craft in Part II herein is based only on the agreement set out in Part I herein. Craft 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 Craft herein jointly stipulate to the following:

1. Respondent Mary Kym Craft ("Craft") is certified by the MREAC as a state-certified residential real estate appraiser, certificate no. 2006005573. Such certification is and was at all times relevant to this action current and active.

2. Section 339.532.2, RSMo, states in part:

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 [“USPAP”] promulgated by the appraisal standards board of the appraisal foundation;

* * *

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

3. Section 339.535, RSMo, regarding compliance with the Uniform Standards of Professional Appraisal Practice, 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.

4. On or about April 23, 2006, Craft completed and signed a summary appraisal report for residential real estate located at 4505 South Irish Ivy, Springfield, MO 65804 (“the Irish property”). The effective date of the appraisal report was April 12, 2006. This appraisal valued the property at \$566,000. This appraisal shall be referred to hereinafter as the “Irish Ivy Appraisal Report.”

5. Craft was required to develop and report the results of the Irish Ivy Appraisal in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP), 2005 Edition.

6. The Irish Ivy Appraisal Report was prepared for Choice Mortgage, a Missouri mortgage broker.

7. In preparation of the Irish Ivy Appraisal Report, Craft made errors of omission and commission, including, but not limited to:

- a. Failed to explain the results of her analysis of the pending contract for sale of the subject property or why the analysis was not performed, leaving the space provided for such information blank;
- b. Failed to analyze prior listings of the subject property, Comparable Sale No. 1, Comparable Sale No. 3, and Comparable Sale No. 4, which were all much lower than the sales prices identified in the Irish Ivy Appraisal Report, as follows:
 - i. The subject property was listed on September 28, 2005 for \$529,900 and withdrawn on November 23, 2005, but sold without being relisted for \$599,000 approximately five months later;
 - ii. Comparable Sale No. 1 was listed by Elegant Homes & Designs of the Ozark for \$419,900 from November 17, 2004 until January 22,

- 2006 without selling, but sold on March 17, 2006 according to Craft for \$549,000 only two days after it was relisted;
- iii. Comparable Sale No. 3 was listed by Elegant Homes & Designs of the Ozark for \$399,900 for 383 days from November 17, 2004 until January 22, 2006 without selling, but was under contract on January 29, 2006 for \$535,000 after being listed for only two days at \$539,000; and
 - iv. Comparable Sale No. 4 was listed by Elegant Homes LLC for \$474,900 from September 7, 2005 until October 16, 2005, and \$513,720 from November 7, 2005 until November 17, 2005 without selling, but then sold on March 31, 2006 for \$575,000 after being three days on the market.
- c. In the report, Craft failed to explain why the subject property's value raised from \$529,900 to \$599,000 in a few months as part of the analysis of the pending contract. However, Craft had notes in her appraisal workfile of a conversation with a prior owner stating that the builder was to complete further improvements to the property.
 - d. Craft failed to analyze and/or disclose the impact of the prior listing of Comparable Sale No. 1, which indicates the list price was well under \$120,000 of the sale price two months later;

- e. Craft failed to analyze and/or disclose the impact of the prior and final listings of Comparable Sale No. 3, which indicate that the prior list price was approximately \$135,000 less than the contract sales price reached about one week after the prior listing was withdrawn;
 - f. Craft failed to analyze and/or disclose the impact of the two prior listings of Comparable Sale No. 4, which indicate that the prior list prices were \$60,000 to \$100,000 less than the sales price only a few months later;
 - g. Craft inaccurately over estimated the predominate value in the Olde Ivy neighborhood as \$450,000;
 - h. Craft failed to make a proper adjustment for Comparable Sale No. 4's one fireplace compared to the subject property's two fireplaces; and
 - i. Craft failed to make a proper adjustment on Comparable Sale No. 5's three fireplaces compared to the subject property's two fireplaces.
8. The Irish Ivy Appraisal Report overestimates the value, is not credible, is misleading, and was prepared in violation of USPAP Standards 1 and 2.
9. USPAP Standard 1, regarding the development of appraisals, states:
- In developing a real property appraisal, an appraiser must identify the problem to be solved and the scope of work necessary to solve the problem, and correctly complete research and analysis necessary to produce a credible appraisal.

10. USPAP Standard 2, regarding the reporting of the results of an appraisal, states:

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.

11. Based on Craft's errors and omissions in developing and reporting the results of the Irish Appraisal, as stipulated to herein, Craft 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[.]

12. Based on Craft's errors and omissions in developing and reporting the results of the Irish Appraisal, as stipulated to herein, Craft committed errors of omission and commission that 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[.]

13. Based on Craft's errors and omissions in developing and reporting the results of the Irish Ivy Appraisal, as stipulated to herein, Craft rendered appraisal services in a careless 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.

14. Craft's errors and omissions in the preparation of the Sales Comparison Analysis, as stipulated to herein, constitute violations of USPAP Standard 1 and Standards Rule ("SR") 1-4(a), which states:

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 the accordance with Standards Rule 1-2(f).

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

15. Based on Craft's errors and omissions in developing and reporting the results of the Irish Appraisal, as stipulated to herein, Craft failed to properly identify and analyze the prior and/or current listings and the current sale agreement in violation of USPAP Standard 1 and SR 1-5 (a) and (b), which state:

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 agreement 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.

16. Based on Craft's errors and omissions in developing and reporting the results of the Irish Ivy Appraisal, as stipulated to herein, Craft failed to clearly and accurately set forth the appraisal in a manner that would not be misleading and violated 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[.]

17. Based on Craft's errors and omissions in developing and reporting the results of the Irish Appraisal, as stipulated to herein, Craft failed to prepare a report that contained sufficient information to enable the intended users of the appraisal to understand the report properly and violated 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[.]

18. By failing to provide adequate support for the reasoning and conclusions in the Sales Comparison Analysis in the Irish Ivy Appraisal Report, as stipulated to herein, Craft failed to summarize the information analyzed, the appraisal procedures followed, and the reasoning that supports the analysis, opinions, and conclusions, in violation of USPAP SR 2-2(b)(iii) and (ix), which states:

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

...

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

...

(ix) summarize the information analyzed, the appraisal procedures followed, and the reasoning that supports the analyses, opinions, and conclusions[.]

19. Craft's conduct, as stipulated to herein, demonstrates misconduct in the performance of the functions and/or duties of a real estate appraiser, providing cause to discipline her real estate appraiser certification pursuant to § 339.532.2(5), RSMo.

20. Craft'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, providing cause to discipline her real estate appraiser certification pursuant to § 339.532.2(6), RSMo.

21. Each of Craft's USPAP violations, as stipulated to herein, constitutes a violation of § 339.535, RSMo, providing cause to discipline her real estate appraiser certification pursuant to § 339.532.2(7), RSMo.

22. Craft's conduct with regard to the Irish Ivy Appraisal Report, 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, providing cause to discipline her real estate appraiser certification pursuant to § 339.532.2(14), RSMo.

23. Craft's conduct, as stipulated to herein, demonstrates that Craft rendered appraisal services in violation of USPAP Standards 1 and 2, the USPAP Standards Rules cited herein, and § 339.535, RSMo, providing cause to discipline Craft's certification as a state-certified residential real estate appraiser pursuant to §§ 339.532.2 (5), (6), (7), 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.

1. **Craft's certification is on probation.** Craft's certification as a state-certified residential real estate appraiser is hereby placed on PROBATION for a period of EIGHTEEN MONTHS. The period of probation shall constitute the "disciplinary period." During the disciplinary period, Craft shall be entitled to practice as a state-certified residential real estate appraiser under §§ 339.500 through 339.549, RSMo, as amended, provided Craft 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. Craft shall submit written reports to the MREAC by no later than June 1 and December 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 June 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. Craft is responsible for assuring that the reports are submitted to and received by the MREAC.

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

C. During the period of probation, Craft shall not sign appraisal reports as a supervising appraiser. However, Craft may sign, as supervising appraiser, the appraisal reports of Paul James.

D. During the disciplinary period, Craft 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, Craft shall advise each trainee real estate appraiser working under her 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, Craft shall keep the MREAC apprised at all times in writing of her current work and home addresses and telephone numbers at each place of residence and employment. Craft shall notify the MREAC in writing of any change in address or telephone number within 15 days of a change in this information.

F. Craft shall timely renew her certification and timely pay all fees required for certification renewal and comply with all other MREAC requirements necessary to maintain her certification in a current and active state.

G. During the disciplinary period, Craft 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 Craft'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. Craft 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. Craft 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, Craft removes herself 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 Craft shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the MREAC determines that Craft 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 Craft'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 Craft 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. Craft 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. Craft, 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.

12. This Settlement Agreement goes into effect 15 days after the document is signed by the Executive Director of the MREAC.

13. Within 15 days after the effective date of this Settlement Agreement, the MREAC shall file a motion to dismiss with prejudice the case captioned *Missouri Real Estate Appraisers Commission v. Mary Kym Craft*, pending before the Administrative Hearing Commission, case number 10-1301 RA.

LICENSEE

MISSOURI REAL ESTATE
APPRAISERS COMMISSION

Mary Kym Craft 3/10
Mary Kym Craft Date

Vanessa Beauchamp
Vanessa Beauchamp, Executive Director
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