

SETTLEMENT AGREEMENT
BETWEEN
MISSOURI REAL ESTATE APPRAISERS COMMISSION
AND
RICK G. DRAKE

Rick G. Drake (“Drake”) and the Missouri Real Estate Appraisers Commission (“MREAC”) enter into this Settlement Agreement for the purpose of resolving the question of whether Drake’s certification as a state-certified residential real estate appraiser, no. RA002869, 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 Drake 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.

Drake 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 Drake 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, Drake 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.

Drake 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. Drake stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the MREAC that Drake's certification as a state-certified residential real estate appraiser, certificate no. RA002869, is subject to disciplinary action by the MREAC in accordance with the relevant provisions of Chapter 621, RSMo Cum. Supp. 2009, and §§ 339.500 to 339.549, RSMo, as amended.

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

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 Drake herein jointly stipulate to the following:

1. Rick G. Drake is certified by the MREAC as a state-certified residential real estate appraiser, certificate no. RA002869. Drake's certificate is at all times herein current and active.

2. On or about October 15, 2007, Drake supervised the preparation of a summary appraisal report for residential property located at 6430 South 164th Rd., Brighton, MO 65817 ("South Appraisal Report"). The effective date of the appraisal was October 6, 2007. The appraisal valued the subject property at \$255,000.

3. The preparation of the South Appraisal Report was to be prepared in compliance with the Uniform Standards of Professional Appraisal Practice, 2006 edition.

4. 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.

5. Based on the following errors and omissions in the preparation of the South Appraisal Report, Drake is in violation of § 339.535, RSMo, USPAP Standards 1 and 2 and USPAP Standard Rules 1-1(a)-(c), 1-2(e), 1-4(a), 2-1(a)-(c), and 2-2(b)(viii), 2006-2007 edition:

- i. Drake inaccurately stated the subject property's census tract number as 9,999 when it is actually 9603.00;
- ii. Drake inaccurately stated the property's zoning as R-SF when there is no zoning in Polk County;
- iii. Drake incorrectly states that the subject property is serviced by public gas when it is not;
- iv. Drake incorrectly states the subject property's attic is accessible through stairs when it is only accessible through a scuttle in the garage;
- v. Drake inaccurately states the subject property's heat is fueled by natural gas when it actually has a heat pump;
- vi. Drake incorrectly states the foundation is a concrete block when it was actually poured concrete;
- vii. Drake's rating of the subject property's exterior condition as new is misleading because it was two years old at the time;

- viii. Drake inaccurately states the windows are combination windows when they are actually thermal pane;
- ix. Drake inaccurately states the driveway is concrete when it is actually mostly gravel with a concrete pad in front of the garage door;
- x. Drake improperly includes the rooms in the basement in the above grade room count and failed to include the basement square footage in the total square footage;
- xi. Drake improperly uses Comparable Sale 1, the existence of which could not be verified nor found;
- xii. Drake inaccurately states that Comparable Sale 1 closed on May 7, 2007, when it actually closed on February 22, 2007;
- xiii. Drake inaccurately states Comparable Sale 1's age as 2 when it is actually 3 years old;
- xiv. Drake inaccurately states Comparable Sale's room count as 7 total rooms, 4 bedrooms and 2 bathrooms when there are actually 6 total rooms, 3 bedrooms and 2 bathrooms;
- xv. Drake inaccurately states that Comparable 2 is located in Brighton and 1.86 miles northwest of the subject property when it is actually located in Bolivar and approximately 12 miles northwest of the subject property;

- xvi. Drake inaccurately states that Comparable Sale 2 sold for 268,500 when it actually sold for \$298,500;
- xvii. Drake improperly uses Comparable Sale 3 which is superior in quality of construction and lacks a basement;
- xviii. Drake inaccurately states that Comparable Sale 3 has a full basement when it does not;
- xix. Drake inaccurately states that Comparable Sale 3 is in new condition when it is actually in average condition;
- xx. Drake inaccurately states Comparable Sale 3's room count as 7 total rooms, 3 bedrooms and 1.5 bathrooms when there are actually 7 total rooms, 3 bedrooms and 2.5 bathrooms;
- xxi. Drake inaccurately states the Comparable Sale 3's lot size as 3.3 acres when it is actually 2.1 acres more or less;
- xxii. Drake inaccurately states Comparable Sale 3's MLS number;
- xxiii. Drake inaccurately states that Comparable Sale 3 is located in Brighton and is 1.89 miles from the subject property when it is actually located in Bolivar and approximately 15 miles northwest of the subject property;
- xxiv. Drake failed to make adjustments for square footage differences between the subject property and his comparable sales;

- xxv. Drake improperly made a grossly low adjustment for Comparable Sale 3's three car garage;
- xxvi. Drake improperly made a grossly low adjustment for Comparable Sale 3's quality of construction which included all brick and featured several upgrades including granite countertops and extensive crown molding;
- xxvii. Drake improperly concluded the subject property's quality as average when it is actually fair;
- xxviii. Drake failed to give verifiable support for his site value in the Cost Approach; and
- xxix. Drake failed to report or mention a number of bank owned foreclosures and short sales within the subject property's immediate subdivision.

6. Based on Drake's conduct, as stated above, cause exist to discipline his certification pursuant to § 339.532.2(5),(6),(7),(8),(9),(10) and (14), RSMo, which states:

The commission may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 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;

...

(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, RSMo, and §§ 621.045.3 and 621.110, RSMo Cum. Supp. 2009.

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

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

A. Drake 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. Drake is responsible for assuring that the reports are submitted to and received by the MREAC.

B. During the disciplinary period, Drake 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. Drake is responsible for assuring that the logs are submitted to and received by the MREAC. Upon MREAC request, Drake shall submit copies of his work samples for MREAC review.

C. Within six months after the effective date of this Settlement Agreement, Drake shall submit verification to the MREAC of successful completion of the fifteen-hour approved National USPAP course, including examination. This course will not replace the 7-hour National USPAP course required by the general continuing education requirements.

D. Drake may not apply the education required by this Settlement Agreement to satisfy the continuing education hours required for certification renewal.

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

F. During the disciplinary period, Drake 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, Drake 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.

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

H. Drake 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.

I. During the disciplinary period, Drake 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 Drake'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.

J. Drake 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.

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

L. If, at any time within the disciplinary period, Drake 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.

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

10. 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.

11. This Settlement Agreement does not bind the MREAC or restrict the remedies available to it concerning any future violations by Drake of §§ 339.500 to

339.549, RSMo, as amended, or the regulations promulgated thereunder, or of the terms and conditions of this Settlement Agreement.

12. 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.

13. 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. Drake agrees and stipulates that the MREAC has continuing jurisdiction to hold a hearing to determine if a violation of this Settlement Agreement has occurred.

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

15. 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.

16. 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.

17. Drake, 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.

18. Drake 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 Drake's certification. If Drake desires the

Administrative Hearing Commission to review this Settlement Agreement, Drake 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.

19. If Drake 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 Drake's certification. If Drake 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.

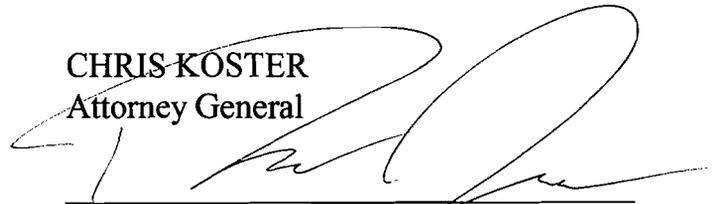
LICENSEE

Rick Drake *12-8-2010*
Rick G. Drake Date

MISSOURI REAL ESTATE
APPRAISERS COMMISSION

Vanessa Beauchamp
Vanessa Beauchamp, Executive Director
Date: *12-15-10*

CHRIS KOSTER
Attorney General



Daniel K. Jacob
Assistant Attorney General
Missouri Bar No. 62164

Supreme Court Building
207 West High Street
P.O. Box 899
Jefferson City, MO 65102
Telephone: 573-751-7728
Telefax: 573-751-5660
Attorneys for the MREAC