

SETTLEMENT AGREEMENT
BETWEEN
MISSOURI REAL ESTATE APPRAISERS COMMISSION
AND
RUSSELL L. ELLISON

Russell L. Ellison (Ellison) and the Missouri Real Estate Appraisers Commission (MREAC) enter into this Settlement Agreement for the purpose of resolving the question of whether Ellison's certification as a state-certified residential real estate appraiser, no. 2005004965, 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 Ellison 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.

Ellison 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

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

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 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 Ellison 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, Ellison 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.

Ellison 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. Ellison stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the MREAC that Ellison's certification as a state-certified residential real estate appraiser, certificate no. 2005004965, 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, as amended.

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

Ellison 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 Ellison herein jointly stipulate to the following:

1. The MREAC was established pursuant to § 339.507, RSMo, for the purpose of executing and enforcing the provisions of §§ 339.500 through 339.549, RSMo.
2. Ellison is certified by the MREAC as a state-certified residential real estate appraiser, certificate no. 2005004965. Ellison's certificate was current and active at all relevant time herein.
3. On September 13, 2007, Ellison prepared or supervised the preparation of a Residential Summary Appraisal Report for 4505 Valley Lane, St. Joseph, Missouri 64503-1809 (the "Valley Lane Appraisal").

4. Section 339.535, RSMo, which requires compliance with the Uniform Standards of Professional Appraisal Practice (“USPAP”), 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 commission of the appraisal foundation.

5. Ellison was required to develop and report the results of the Valley Lane Appraisal in compliance with USPAP, 2006 Edition. A copy of the provisions of USPAP cited herein are attached as Exhibit A.

6. Based upon the following errors and omissions in the preparation of the Valley Lane Appraisal, Ellison violated § 339.535, RSMo; the USPAP Ethics Rule regarding Conduct; USPAP Standards 1 and 2; and USPAP Standards Rules 1-1(a) and (b), 1-4(a) and (b), 2-1(a) and (b), and 2-2(b)(viii):

- A. Appraiser chose comparable sales from significantly superior neighborhood when comparables were available in the subject’s neighborhood, and failed to make any adjustment for location or of the superior characteristics of the comparable sales creating an inflated value; and
- B. Cost approach per-square-foot amount was too high and can not be replicated.

7. On October 28, 2008, Ellison prepared a Residential Summary Appraisal Report for 104 Brentwood Drive, Liberty, Missouri 64068-2914 (the “Brentwood Drive Appraisal”).

8. Ellison was required to develop and report the results of the Brentwood Drive Appraisal in compliance with USPAP, 2008-2009 Edition. A copy of the provisions of USPAP cited herein are attached as Exhibit B.

9. Based upon the following errors and omissions in the preparation of the Brentwood Drive Appraisal, Ellison violated § 339.535, RSMo; the USPAP Ethics Rule regarding Conduct; USPAP Standards 1 and 2; and USPAP Standards Rules 1-1(a) and (c), 1-4(a) and (b), 1-5(b), 2-1(a) and (b), and 2-2(b)(viii):

- A. Paired sales were not used for grid adjustments;
- B. Comparable Sale #1 was a foreclosure sale with seller paid concessions, but this was not disclosed nor discussed;
- C. No support for the land value under the cost approach;
- D. Lack of analysis of prior and pending sales and listings;
- E. The reconciliation did not summarize the data, analysis or reasoning that supported the appraisers opinions and conclusions, in that the subject property had a previous sale on 7/11/2008 for \$82,000, the subject property was under contract for \$124,000, and appraised for

\$128,000, there was no analysis of why there was such a large increase in valuation in such a short period of time.

10. Ellison's conduct in developing and reporting the results of the Valley Lane and Brentwood Drive Appraisals, as set forth above, constitutes incompetency, misconduct, and misrepresentation in the performance of the functions and duties of a real estate appraiser.

11. Based upon Ellison's errors and omissions in the Valley Lane and Brentwood Drive Appraisals as set forth above, the appraisal overstates the value of the property, lacks credibility, and is misleading.

12. Ellison's conduct in developing and reporting the results of the Valley Lane and Brentwood Drive Appraisals, as set forth above, constitutes a violation of the standards for the development and communication of real estate appraisals as provided in §§ 339.500 to 339.549, RSMo, as amended.

13. Ellison's conduct in developing and reporting the results of the Valley Lane and Brentwood Drive Appraisals, as set forth above, constitutes a failure and refusal without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report and communicating an appraisal.

14. Ellison's conduct in developing and reporting the results of the Valley Lane and Brentwood Drive Appraisals, as set forth above, constitutes a violation of provisions of §§ 339.500 through 339.549, RSMo, as amended, and the regulations of the MREAC

for the administration and enforcement of the provisions of §§ 339.500 to 339.549, RSMo, as amended.

15. Based on the facts and violations set forth above, cause exists to discipline Ellison's certification pursuant to § 339.532.2(5), (6), (7), (8), (9), (10) and (14), RSMo Cum. Supp. 2008, which provides:

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;

(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 commission 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. 2008.

16. **Ellison's certificate is suspended, followed by a period of probation.**

Ellison's certification as a state-certified residential real estate appraiser is hereby SUSPENDED for a period of THREE (3) MONTHS, and shall immediately thereafter be placed on PROBATION for a period of TWO (2) YEARS. The periods of suspension and probation shall constitute the "disciplinary period." During the period of suspension, Ellison shall not be entitled to practice as a state-certified residential real estate appraiser pursuant to Chapter 339, RSMo. During the period of probation, Ellison shall be entitled to practice as a state-certified residential real estate appraiser under Chapter 339, RSMo, provided Ellison adheres to all the terms and conditions of this Settlement Agreement.

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

A. Ellison 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, 2010. 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. Ellison is responsible for assuring that the reports are submitted to and received by the MREAC.

B. During the disciplinary period, Ellison 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, 2010. 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. Ellison is responsible for assuring that the logs are submitted to and received by the MREAC. Upon MREAC request, Ellison shall submit copies of his work samples for MREAC review.

C. During the period of suspension, Ellison shall not sign appraisal reports in any capacity. During the period of probation, Ellison shall not sign appraisal reports as a supervising appraiser.

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

F. Ellison 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.

G. During the disciplinary period, Ellison 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 Ellison's certification as a state-certified residential 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. Ellison 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. Ellison 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, Ellison 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, unlicensed status or unknown whereabouts shall not be deemed or taken as any part of the disciplinary period.

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

19. 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.

20. This Settlement Agreement does not bind the MREAC or restrict the remedies available to it concerning any future violations by Ellison of Chapter 339, RSMo, as amended, or the regulations promulgated thereunder, or of the terms and conditions of this Settlement Agreement.

21. 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.

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

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

24. 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.

25. 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.

26. Ellison, 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.

27. Ellison 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 Ellison's certification. If Ellison desires the Administrative Hearing Commission to review this Settlement Agreement, Ellison 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.

28. Ellison 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 Ellison's certification. If Ellison 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

MISSOURI REAL ESTATE
APPRAISERS COMMISSION


RUSSELL L. ELLISON 2/8/2010
Date


VANESSA BEAUCHAMP 2/18/10

Executive Director

Date: _____

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