

**PROBATION VIOLATION SETTLEMENT AGREEMENT**  
**BETWEEN THE MISSOURI REAL ESTATE APPRAISERS COMMISSION**  
**AND VIRGIL HULEN**

Virgil Hulen (Hulen) and the Missouri Real Estate Appraisers Commission (MREAC) enter into this Settlement Agreement for the purpose of resolving the question of whether Hulen's certification as a state-certified general real estate appraiser, no. RA002223, will be subject to additional discipline under the MREAC's pending Probation Violation Complaint. The parties hereto waive the right to a hearing before the MREAC under § 324.042, RSMo Cum. Supp. 2008. The MREAC and Hulen jointly stipulate and agree that a final disposition of this matter may be effectuated as described below.

Hulen acknowledges that he is aware of and understands the various rights and privileges afforded him by law, including: 1) the right to a hearing of the charges against him; 2) the right to appear and be represented by legal counsel; 3) the right to have all charges against him proven upon the record by competent and substantial evidence; 4) the right to cross-examine any witness appearing at the hearing against him; 5) the right to present evidence on his behalf at the hearing; 6) the right to a decision upon the record of the hearing by the MREAC concerning the probation violation complaint pending against him; 7) the right to a ruling on questions of law by the MREAC; 8) the right to a claim for attorneys' fees and expenses, and 9) the right to obtain judicial review of the decisions of the MREAC. Being aware of these rights provided Hulen by operation of law, Hulen

knowingly and voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement. Hulen further agrees to abide by the terms of this document as they pertain to Hulen.

Hulen acknowledges that he received a copy of the Probation Violation Complaint in this case, which was filed with the MREAC on March 26, 2009. Hulen stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the MREAC that Hulen's certification as a state-certified general real estate appraiser, certificate no. RA002223 is subject to further disciplinary action by the MREAC in accordance with the provisions of § 324.042, RSMo (2008 Session Laws, Senate Bill 788), and § 339.532.2 (6), (7), (8), (10), and (14), RSMo, as amended.

The parties stipulate and agree that the disciplinary order agreed to by the MREAC and Hulen in Part II herein is based only on the agreement set out in Part I herein. Hulen 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. Hulen also understands that as a result of his acceptance of additional discipline as detailed below, the MREAC will dismiss its currently pending Probation Violation Complaint.

**I.**  
**Joint Stipulation of Facts and Conclusions of Law**

Based upon the foregoing, the MREAC and Hulen herein jointly stipulate to the following:

1. The Missouri Real Estate Appraisers Commission (“MREAC”) was established pursuant to § 339.507, RSMo<sup>1</sup>, for the purpose of executing and enforcing the provisions of §§ 339.500 through 339.549, RSMo.

2. Hulen holds a certification as a state-certified general real estate appraiser, certificate number RA002223, issued by the MREAC, and such certificate is and has at all relevant times has been active.

3. On or about April 12, 2006, Hulen entered into a Joint Motion for Consent Order, Joint Stipulation of Facts and Conclusions of Law, Waiver of Hearings Before the Administrative Hearing Commission and the Missouri Real Estate Appraisers Commission and Disciplinary Order (“Joint Order”) with the MREAC relative to Case No. 05-0526 RA, *MREAC v. Cissna, et al.*, before the Administrative Hearing Commission. The Joint Order provided that Hulen’s license was to be placed on probation, and also set forth the terms of such probation. The parties stipulated to the facts underlying the placement of Hulen’s license on probation.

4. As a result of the Joint Order, Hulen’s license as a state-certified general real estate appraiser was placed on probation for a period of three years, such period being referred to as “the disciplinary period.” During the disciplinary period, Hulen was required to comply with all provisions of §§ 339.500 through 339.549, RSMo, as

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<sup>1</sup> All statutory references are to the 2000 Revised Statutes of Missouri unless otherwise noted.

amended; all rules and regulations promulgated thereunder, and all federal and state laws. In the event the MREAC determines that Hulen has violated any term or condition of the Joint Order, the MREAC may, in its discretion, vacate and set aside the discipline therein imposed and impose such further discipline as it shall deem appropriate, provided, however, that no additional discipline shall be imposed by the MREAC without notice and opportunity for hearing before the MREAC as a contested case in accordance with the provisions of Chapter 536, RSMo. If any alleged violation of the Joint Order occurs during the disciplinary period, the MREAC may choose to conduct a hearing before it to determine whether a violation occurred and may impose further discipline. The Joint Order does not bind the MREAC or restrict the remedies available to it concerning any future violations by Hulen of §§339.500 through 339.549, RSMo, as amended, or the regulations promulgated thereunder, or of the terms and conditions of the Joint Order. Hulen agreed and stipulated that the MREAC has continuing jurisdiction to hold a hearing to determine if a violation of the Joint Order has occurred.

5. As part of Hulen's probation, the MREAC reviewed Hulen's summary appraisal report for certain real property located at 10760 Hwy 61, Hannibal, MO 63401, prepared on or about August 23, 2006, ("Hannibal appraisal report"), to determine Hulen's compliance with the Uniform Standards of Professional Appraisal Practice ("USPAP") standards.

6. The parties agree that the Hannibal appraisal report is deficient in several ways and that it contains violations of the USPAP provisions noted in paragraph 21 below.

**STATEMENTS OF LAW**

7. Jurisdiction and venue are proper before the Missouri Real Estate Appraisers Commission under § 324.042, RSMo, which states that “any board, commission, or committee within the division of professional registration may impose additional discipline when it finds after hearing that a licensee, registrant, or permittee has violated any disciplinary terms previously imposed or agreed to pursuant to settlement. The board, commission, or committee may impose as additional discipline, any discipline it would be authorized to impose in an initial disciplinary hearing.

8. 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:

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(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;

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(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; and,

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(14) Violation of any professional trust or confidence.

9. Section 339.535 states that 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.
10. The preparation of the Hannibal Appraisal Report was to be in compliance with the Uniform Standards of Professional Appraisal Practice, 2006 edition. The pertinent provisions of USPAP (2006) are cited below.
  11. USPAP Standards Rule 1-1 states that “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;
    - (b) not commit a substantial error of omission or commission that significantly affects an appraisal; and,
    - (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.”
  12. USPAP Standards Rule 1-2 states in pertinent part that “in developing a real

property appraisal, an appraiser must: ...

(b) identify the intended use of the appraiser's opinions and conclusions; ...

(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; .

(ii) the real property interest to be valued;

(iii) any personal property, trade fixtures, or intangible items that are not real property but are included in the appraisal;

(iv) any known easements, restrictions, encumbrances, leases, reservations, covenants, contracts, declarations, special assessments, ordinances, or other items of a similar nature; and,

(v) whether the subject property is a fractional interest, physical segment, or partial holding...

(f) identify any extraordinary assumptions necessary in the assignment;

(g) identify any hypothetical conditions necessary in the assignment; and,

(h) determine the scope of work necessary to produce credible assignment results in accordance with the Scope of Work Rule.”

13. USPAP Standards Rule 1-3 (b) states that when necessary for credible assignment results in developing a market value opinion, an appraiser must develop an opinion of the highest and best use of the real estate.

14. USPAP Standards Rule 1-4 states in pertinent part that “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.

(b) 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).”

15. USPAP Standards Rule 1-5 states that “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 agreements of sale, options, and 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. USPAP Standards Rule 1-6 states that “in developing a real property appraisal, an appraiser must:

(a) reconcile the quality and quantity of data available and analyzed within the approaches used; and,

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

17. USPAP Standards Rule 2-1 states that “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. 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;
- (b) contain sufficient information to enable the intended users of the appraisal to understand the report properly; and,
- (c) clearly and accurately disclose all assumptions, extraordinary assumptions, hypothetical conditions, and limiting conditions used in the assignment.”

18. USPAP Standards Rule 2-2(b) states in pertinent part that the content of a Summary Appraisal Report must be consistent with the intended use of the appraisal and, at a minimum:

- (i) – state the identity of the client and any intended users, by name or type;
- (ii) – state the intended use of the appraisal;
- (iii) – summarize information sufficient to identify the real estate involved in the appraisal, including the physical and economic property characteristics relevant to the assignment;

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- (vii) – summarize the scope of work used to develop the appraisal;
- (viii) – summarize the information analyzed, the appraisal methods and techniques employed, and the reasoning that supports the analyses, opinions, and conclusions; exclusion of the sales comparison approach, cost approach, or income approach must be explained;
- (ix) – state the use of the real estate existing as of the date of value and the use of the real estate reflected in the appraisal; and, when an opinion of highest and best use was developed by the appraiser, summarize the support and rationale for that opinion;
- (x) - clearly and conspicuously state all extraordinary assumptions and hypothetical conditions; and state that their use might have

affected the assignment results [.]

19. USPAP Ethics Rule for Conduct states in pertinent part that an appraiser must not communicate assignment results in a misleading or fraudulent manner.

20. Under the USPAP Scope of Work Rule, for each appraisal, an appraiser must:

1. identify the problem to be solved;
2. determine and perform the scope of work necessary to develop credible assignment results; and,
3. disclose the scope of work in the report.

An appraiser must properly identify the problem to be solved in order to determine the appropriate scope of work. The appraiser must be prepared to demonstrate that the scope of work is sufficient to produce credible results.

21. Based on the agreed-upon errors and omissions in the preparation of the Hannibal Appraisal Report, Hulen is in violation of paragraph 46 of the Joint Order, Section 339.535, RSMo, the USPAP Ethics Rule, the USPAP Scope of Work Rule, and USPAP Standards Rules 1-1(a) - (c), 1-2 (e), (i), (f), (g), and (h), 1-3 (b), 1-4(a) and (b), 1-5 (a) and (b), 1-6 (a) and (b), 2-1 (a) – (c), and 2-2(b) (ii), (iii), (vii), (viii), (ix), and (x), 2006 edition.

22. Based on the facts and violations set forth above, cause exists to further discipline Hulen's certification as a state-certified general real estate appraiser pursuant to § 339.532.2 (6), (7), (8), (10), and (14), RSMo, as amended and stated above.

**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.

1. **Hulen's certification is on probation.** Hulen's certification as a state-certified general real estate appraiser is hereby placed on PROBATION for a period of ONE YEAR. The period of probation shall constitute the "disciplinary period", and is in addition to the three years of probation imposed by the April 12, 2006 Joint Order. During the disciplinary period, Hulen shall be entitled to practice as a state-certified general real estate appraiser under Chapter 339.500 - 339.549, RSMo, as amended, provided Hulen 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. Hulen shall submit written reports to the MREAC by no later than January 15, April 15, July 15 and October 15, during the disciplinary period stating truthfully whether there has been compliance with all terms and conditions of this

Settlement Agreement. Hulen is responsible for assuring that the reports are submitted to and received by the MREAC.

B. During the disciplinary period, Hulen shall maintain a log of all appraisal assignments as required by 20 CSR 2245-2.050. A true and accurate copy of which shall be submitted to the MREAC every three (3) months after the disciplinary period goes into effect with the written reports required under subparagraph A., above. Hulen is responsible for assuring that the logs are submitted to and received by the MREAC. Upon MREAC request, Hulen shall submit copies of his work samples for MREAC review.

C. During the disciplinary period, Hulen 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, Hulen 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.

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

E. Hulen shall timely renew his license and timely pay all fees required for license renewal and comply with all other MREAC requirements necessary to maintain his license in a current and active state.

F. During the disciplinary period, Hulen 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 Hulen's license 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.

G. Hulen 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.

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

I. If, at any time within the disciplinary period, Hulen removes himself from the state of Missouri, ceases to be currently licensed 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.

3. Upon the expiration of the disciplinary period, the certification of Hulen shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the MREAC determines that Hulen 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 Hulen'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 Hulen of Chapter 339.500 - 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. Hulen 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. Hulen, 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. This Settlement Agreement shall become effective 15 days after the document is signed by the Executive Director of the MREAC.

RESPONDENT

  
Virgil Hulen \_\_\_\_\_  
Date 7-27-09

MISSOURI REAL ESTATE  
APPRAISERS COMMISSION

By:  8/31/09  
Vanessa Beauchamp \_\_\_\_\_  
Executive Director Date

Cook Vetter Doerhoff & Landwehr, P.C.

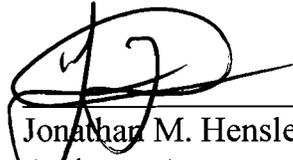
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