

SETTLEMENT AGREEMENT BETWEEN MISSOURI REAL ESTATE  
APPRAISERS COMMISSION AND WADE HIGGINS

Wade Higgins (Higgins) and the Missouri Real Estate Appraisers Commission (MREAC) enter into this Settlement Agreement for the purpose of resolving the question of whether Higgins' certification as a certified residential real estate appraiser, No. 2006008946, will be subject to discipline. Pursuant to § 536.060, RSMo 2000,<sup>1</sup> 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 Higgins 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.

Higgins 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 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 Higgins may present evidence in mitigation of discipline; the

---

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

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, Higgins 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.

Higgins 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. Higgins stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the MREAC that Higgins' certification as a certified residential real estate appraiser, Certificate No. 2006008946, is subject to disciplinary action by the MREAC in accordance with the relevant provisions of Chapter 621, RSMo Cum. Supp. 2008, and §§ 339.500 to 339.549, RSMo as amended.

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

1. On October 12, Higgins prepared an appraisal report for 3820 Shaw Boulevard, St. Louis, Missouri (the 3820 Shaw Blvd. Appraisal Report).

2. 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.”

3. The preparation of the 3820 Shaw Blvd. Appraisal Report was to be prepared in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP), 2006 Edition. The cited provisions of USPAP, 2006 Edition are attached hereto as Exhibit A.

4. Based on the following errors and admissions in the preparation of the 3820 Shaw Blvd. Appraisal Report, Higgins is in violation of § 339.535, RSMo; the USPAP Ethics Rule; the USPAP Competency Rule; the USPAP Scope of Work Rule; the USPAP Standards 1 and 2; and USPAP Standards Rules 1-1(a) and (c), 1-2(e), 1-3(a), 1-4(a), (b), and (c), and 2-1(b) 2006 Edition:

a. Higgins reported inaccurate information in the “neighborhood” section of the appraisal;

- b. Higgins failed to correctly report the zoning of the subject property as B: two family residential;
- c. Higgins reported that the subject property had 3.5 baths when it actually had only 3;
- d. Higgins overstated the gross living area of the subject property by 200 square feet;
- e. Higgins reported that the subject property had a two car driveway when it only had a one car driveway;
- f. Higgins' reported value estimate was not supported by the subject property's atypically minimal additional features reported;
- g. In the sales comparison approach, Higgins used properties from different neighborhoods than the subject property;
- h. In the sales comparison approach, Higgins used sales that occurred at least one year prior to the appraisal of the subject property;
- i. In the sales comparison approach, Higgins reported a sale that was not comparable to the subject property in that it was a historically significant home noted in the local news as having one of the best yards in St. Louis;
- j. In the sales comparison approach, Higgins reported sale number 4, which was not comparable in that it had sold at least 2 years prior to the appraisal and was on the premier subject neighborhood street;

- k. In the cost approach, Higgins reported an inflated site value of \$100K and failed to support that site value;
- l. In the cost approach, Higgins did not discuss any updates to the subject property and failed to provide support for the reported effective age of 10 years when the subject property was built in 1921 and was in average condition and quality.
5. On October 12, 2006, Higgins also prepared an appraisal report for 3822 Shaw Boulevard, St. Louis, Missouri (the 3822 Shaw Blvd. Appraisal Report).
6. 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.”
7. The preparation of the 3822 Shaw Blvd. Appraisal Report was to be prepared in compliance with the USPAP, 2006 Edition. The cited provisions of USPAP, 2006 Edition are attached hereto as Exhibit A.
8. Based on the following errors and admissions in the preparation of the 3822 Shaw Blvd. Appraisal Report, Higgins is in violation of § 339.535, RSMo; the USPAP Ethics Rule; the USPAP Competency Rule; USPAP Scope of Work Rule; USPAP Standards 1 and 2’ and USPAP Standards Rules 1-1(a) and (c), 1-2(e), 1-4(a), (b) and (c), and 2-1(b) 2006 Edition:

- a. Higgins failed to correctly employ the sales comparison approach or the cost approach to value;
- b. Higgins did not have the requisite knowledge of the subject property's neighborhood;
- c. In the sales comparison approach, Higgins used homes on streets that are superior to the subject property's street in spite of being in the same area;
- d. In the sales comparison approach, Higgins failed to effectively analyze comparables used;
- e. In the income approach, Higgins failed to discuss external depreciation;
- f. Higgins failed to adequately explain updates to the subject property;
- g. Higgins failed to correctly report the zoning as two family dwelling;
- h. Higgins failed to report that the subject property fronts Shaw Boulevard, a busy traffic street;
- i. Higgins failed to note the subject property's narrow driveway and the potential for cross ingress and egress;
- j. In the cost approach, Higgins did not discuss any updates to the subject property and failed to provide support for the reported effective age of 10 years when the subject property was built in 1921 and was in average condition and quality.

9. Based on the facts and violations set forth above, cause exists to discipline Higgins' certification as a state-certified residential real estate appraiser pursuant to § 339.532.2(5), (6), (7), (8), (9), (10), and (14), RSMo, which states:

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 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. 2008.

1. **Higgins' certification is suspended followed by a period of probation.**

Higgins' certification as a real estate appraiser is hereby SUSPENDED for a period of ONE YEAR, and shall immediately thereafter be placed on PROBATION for a period of THREE YEARS. The periods of suspension and probation shall constitute the "disciplinary period." During the period of suspension, Higgins shall not be entitled to practice as a real estate appraiser pursuant to §§ 339.500 to 339.549, RSMo. During the period of probation, Higgins shall be entitled to practice as a real estate appraiser under §§ 339.500 to 339.549, RSMo, provided Higgins adheres to all the terms of this Settlement Agreement.

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

- a. Higgins shall submit written reports to the MREAC by no later than November 1 and May 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 November 1, 2009. 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. Higgins is responsible for assuring that the reports are submitted to and received by the MREAC.

b. During the disciplinary period, Higgins 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 November 1 and May 1 during each year of the disciplinary period. The first log shall be submitted on or before November 1, 2009. 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. Higgins is responsible for assuring that the logs are submitted to and received by the MREAC. Upon MREAC request, Higgins shall submit copies of his work samples for MREAC review.

c. Within six months after Higgins completes the one year period of suspension, he shall submit verification to the MREAC of successful completion of the 15-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. Higgins may not apply the education required by this Settlement Agreement to satisfy the continuing education hours required for certification renewal.

e. During the disciplinary period, Higgins 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, Higgins 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.

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

g. Higgins 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.

h. During the disciplinary period, Higgins 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 Higgins' 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.

i. Higgins 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.

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

k. If, at any time within the disciplinary period, Higgins 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.

3. Upon the expiration of the disciplinary period, the certification of Higgins shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the MREAC determines that Higgins 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 Higgins' 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 Higgins of §§ 339.500 to 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. Higgins 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. Higgins, together with his partners, shareholders, officers, directors, 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. Higgins understands that he may, either at the time the Settlement Agreement is signed by all parties, or within 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 Higgins' certification. If Higgins desires the Administrative Hearing Commission to review this Settlement Agreement, Higgins may

submit his request to: Administrative Hearing Commission, Truman State Office Building, Room 640, 301 West High Street, P.O. Box 1557, Jefferson City, Missouri 65102.

13. If Higgins 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 Higgins' certification. If Higgins 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

Wade Higgins 6/23/09  
Wade Higgins Date

MISSOURI REAL ESTATE APPRAISERS  
COMMISSION

Vanessa Beauchamp 6-29-09  
Vanessa Beauchamp Date  
Executive Director

VAN MATRE, HARRISON,  
VOLKERT AND HOLLIS, P.C.

Thomas M. Harrison  
Thomas M. Harrison  
Attorney at Law  
Missouri Bar No. 36617

CHRIS KOSTER  
Attorney General

Rebecca K. McKinstry  
Rebecca K. McKinstry  
Assistant Attorney General  
Missouri Bar No. 61069

1103 East Broadway  
P.O. Box 1017  
Columbia, MO 65201  
Telephone: 573-874-7777  
Facsimile: 573-875-0017

Attorney for Licensee

7<sup>th</sup> Floor, Broadway State Office Building  
221 West High Street  
P.O. Box 899  
Jefferson City, MO 65102  
Telephone: 573-751-5406  
Facsimile: 573-751-5660  
E-mail: Rebecca.McKinstry@ago.mo.gov

Attorneys for Missouri Real Estate  
Appraisers Commission