

000272 MAR 23rd

SETTLEMENT AGREEMENT
BETWEEN
MISSOURI REAL ESTATE APPRAISERS COMMISSION
AND
WILLIAM J. CALDWELL

William J. Caldwell (Caldwell) and the Missouri Real Estate Appraisers Commission (MREAC) enter into this Settlement Agreement for the purpose of resolving the question of whether Caldwell's license as a state-certified residential real estate appraiser, no. 2010003884, 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 Supp. 2013. The MREAC and Caldwell jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo Supp. 2013.

Caldwell 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 Caldwell 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, Caldwell 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.

In entering into this Settlement Agreement and making the stipulations set forth herein, Caldwell relies upon legal precedent from the Appellate Courts of the State of Missouri, specifically, *State ex rel. Mallan v. Huesemann*, 942 S.W.2d 424 (Mo.App. 1997) for judicial precedent that the fact of him entering into this Settlement Agreement and his stipulations herein are inadmissible in any civil action relating to the facts and circumstances as set forth in the Complaint of the MREAC. Therefore, Caldwell stipulates solely for purposes of settlement that the factual allegations and conclusions of law contained in this Settlement Agreement are true.

Caldwell 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. Caldwell stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the MREAC that Caldwell's license as a state-certified residential real estate appraiser, license no. 2010003884, 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 Caldwell in Part II herein is based only on the agreement set out in Part I herein. Caldwell 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 Caldwell 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, as amended.
2. Caldwell is certified by the MREAC as a state-certified residential real estate appraiser, license no. 2010003884. Such certification is and was at all times relevant to this action current and active.

3. Jurisdiction and venue are proper before the Administrative Hearing Commission pursuant to §§ 621.045 and 339.532.2, RSMo Supp. 2013.

4. Section 339.532.2, RSMo Supp. 2013, states in part:

2. 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, state-licensed appraiser trainee, state-certified residential appraiser trainee, state-certified general appraiser trainee, state-licensed appraisal management company that is a legal entity other than a natural person, any person who is a controlling person as defined in this chapter, 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[.]

5. Section 339.535, RSMo 2000, 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.

6. On or about June 1, 2010, Caldwell completed and signed a summary appraisal report for residential real estate located at 1513 Lake Road, Liberty, Missouri 64068 (“Lake Road Property”). The effective date of the appraisal report was May 31, 2010. This appraisal valued the property at \$165,000. This appraisal shall be referred to hereinafter as the “Lake Road Appraisal Report.”

7. Caldwell was required to develop and report the results of the Lake Road Property appraisal in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP), 2010-2011 Edition.

8. The Lake Road Appraisal Report was prepared for a lender. Caldwell sent an original and updated version of the Lake Road Appraisal Report to the lender in or about June 2010.

9. In preparing and reporting the Lake Road Appraisal Report, Caldwell made significant and substantial errors of omission and/or commission, including, but not limited to:

- a. The information in the neighborhood section was not complete and accurate in that the age and value range of homes located in the defined area were represented as \$125,000 to \$185,000 and 35 to 65 years. Within the 12 months prior to the effective date of the Lake Road Appraisal Report, the value of homes sold in the area ranged from \$8,500 to \$450,000 and the age ranged from 0 to 100+ years.
- b. The gross living area was listed as 966 square feet, while Clay County records listed it as 880 square feet. Caldwell did not explain the difference in gross living area which is necessary to avoid misinterpretation by the lender, client and/or homeowner and/or to verify accuracy of the information.

- c. Caldwell stated the following in the field notes of the Lake Road Appraisal Report when referring to the basement: “studs for bedroom, ½ bath drywalled, laundry”. However, page one of the Lake Road Appraisal Report states “the lower level is finished in good quality and consists of family room, bedroom and ½ bath.” Thus, the Lake Road Appraisal Report is misleading in regards to the basement.

10. In the preparation and reporting of the Sales Comparison Analysis in the Lake Road Appraisal Report, Caldwell made significant and/or substantial errors of omission and/or commission, including, but not limited to:

- a. The Lake Road Property’s estimated value of \$165,000 was substantially higher than the Lake Road Property’s actual value at the time due to the poor selection of comparable sales, along with other mistakes detailed in this Complaint.
- b. Regarding the real estate at 1216 Camelot Drive, Liberty, Missouri 64068 identified as Comparable Sale No. 1 in the Lake Road Appraisal Report (“Comparable 1”):
 - i. Caldwell incorrectly stated the age of Comparable 1 as 47 years, when its actual age was 37 years.
 - ii. Caldwell stated that Comparable 1 had one bath and 812 square feet of gross living area, while Clay County, Missouri and Multiple Listing Service records indicated

that Comparable 1 had two bathrooms and 1,573 square feet of gross living area.

- iii. Caldwell omitted a patio, mentioning only a deck.
- iv. Comparable 1's bedroom count is incorrectly stated as two, when its actual bedroom count is three, resulting in no adjustment for the difference.

c. Regarding the real estate at 806 Howard Lane, Liberty, Missouri 64068 identified as Comparable Sale No. 2 in the Lake Road Appraisal Report ("Comparable 2"):

- i. Caldwell stated that Comparable 2 had 1052 square feet of gross living area, while Clay County, Missouri records indicated that Comparable 2 had 1352 square feet of gross living area.
- ii. Comparable 2's bedroom count is incorrectly stated as two, when its actual bedroom count is three, resulting in no adjustment for the difference.
- iii. Caldwell applied a positive \$12,000 adjustment to Comparable 2 for inferior basement finish. The adjustment is unwarranted and excessive because Comparable 2 had two separate living areas, a bedroom, a recreation room, a den, and a full bath below grade. The Lake Road Property has a recreation room, a bedroom and a partial bathroom below grade.

- d. Regarding the real estate at 1524 Nancy Lane, Liberty, Missouri 64068 identified as Comparable Sale No. 3 in the Lake Road Appraisal Report (“Comparable 3”):
- i. Caldwell stated that Comparable 3 had 1032 square feet of gross living area, while Multiple Listing Service and Clay County, Missouri records indicated conflicting gross living area.
 - ii. Caldwell applied a positive \$13,000 adjustment to Comparable 3 for inferior basement finish. The adjustment is unwarranted and excessive.
 - iii. Multiple Listing Service records stated that Comparable 3 had a 21 x 18 sun porch, which Caldwell failed to list in the Lake Road Appraisal Report.
 - iv. Caldwell stated that Comparable 3 was 52 years old at the time of the appraisal, while Multiple Listing Service records stated that Comparable 3 was 41-50 years old at the time of the appraisal; and Clay County, Missouri Records stated that Comparable 3 was 47 years old at the time of the appraisal.
 - v. Multiple Listing Service records stated that Comparable 3 had a fence, which Caldwell failed to list in the Lake Road Appraisal Report.

11. In the preparation and reporting of the Cost Approach in the Lake Road Appraisal Report, Caldwell made significant and/or substantial errors of omission and/or commission, including, but not limited to:

- a. The Lake Road Property was evaluated as average/good construction when it was closer to fair or average construction, thus resulting in an inflated cost basis.
- b. The cost per square foot of \$142.26 for the construction of the dwelling was significantly inflated.

12. The Lake Road Appraisal Report overestimates the value, is not credible and/or misleading, and was developed and reported in violation of USPAP Standards 1 and 2.

13. USPAP Standard 1, regarding the development of an appraisal, states:

In developing a real property appraisal, an appraiser must identify the problem to be solved, determine the scope of work necessary to solve the problem, and correctly complete research and analysis necessary to produce a credible appraisal.

14. USPAP Standard 2, regarding the reporting 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.

15. Caldwell's errors and/or omissions in the preparation of the Sales Comparison Analysis and the Cost Approach, as alleged in this Complaint, constitute violations of USPAP Standard 1 and Standards Rule ("SR") 1-4(a) and (b), which states:

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).

16. Based on Caldwell's errors and/or omissions in developing and reporting the results of the Lake Road Property appraisal, as alleged in this Complaint, Caldwell 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[.]

17. Based on Caldwell's errors and/or omissions in developing and reporting the results of the Lake Road Property appraisal, as alleged in this Complaint, Caldwell committed substantial errors of omission and/or commission that significantly 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[.]

18. Based on Caldwell's errors and/or omissions in developing and reporting the results of the Lake Road Property appraisal, as alleged in this Complaint, Caldwell rendered appraisal services in a careless and/or negligent 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.

19. Based on Caldwell's errors and/or omissions in developing and reporting the results of the Lake Road Property appraisal, as alleged in this Complaint, Caldwell 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[.]

20. Based on Caldwell's errors and/or omissions in developing and reporting the results of the Lake Road Property appraisal, as alleged in this Complaint, Caldwell 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[.]

21. By failing to provide adequate support for the reasoning and conclusions in the Sales Comparison Analysis and the Cost Approach in the

Lake Road Appraisal Report, as alleged in this Complaint, Caldwell 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)(viii), which states:

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

(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[.]

22. Caldwell's conduct, as alleged in this Complaint, demonstrates incompetency and/or gross negligence in the performance of the functions and/or duties of a real estate appraiser, providing cause to discipline his real estate appraiser license pursuant to § 339.532.2(5), RSMo Supp. 2013.

23. Caldwell's conduct, as alleged in this Complaint, 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 his real estate appraiser license pursuant to § 339.532.2(6), RSMo Supp. 2013.

24. Caldwell's conduct, as alleged in this Complaint, demonstrates a failure and/or refusal without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report, and communicating an appraisal, providing cause to discipline his real estate appraiser license pursuant to § 339.532.2(8), RSMo Supp. 2013.

25. Caldwell's conduct, as alleged in this Complaint, demonstrates negligence and/or incompetence in developing an appraisal, in preparing an appraisal report, and in communicating an appraisal, providing cause to discipline his real estate appraiser license pursuant to § 339.532.2(9), RSMo Supp. 2013.

26. Each of Caldwell's USPAP violations, as alleged in this Complaint, constitutes a violation of § 339.535, RSMo, providing cause to discipline his real estate appraiser license pursuant to § 339.532.2(7) and (10), RSMo Supp. 2013.

27. Caldwell's conduct, as alleged in this Complaint, violates the professional trust and confidence he owed to his clients, the intended users of the appraisal report, and the public, providing cause to discipline his real estate appraiser license pursuant to § 339.532.2(14), RSMo Supp. 2013.

28. Caldwell's conduct, as alleged in this Complaint, demonstrates that Caldwell rendered appraisal services in violation of USPAP Standards 1

and 2, the USPAP Standards Rules cited in this Complaint, and § 339.535, RSMo, providing cause to discipline Caldwell's license as a residential real estate appraiser pursuant to §§ 339.532.2(5), (6), (7), (8), (9), (10) and (14), RSMo Supp. 2013.

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 §§ 621.045.4 and 621.110, RSMo Supp. 2013.

29. **Caldwell's license is on probation.** Caldwell's license 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, Caldwell shall be entitled to practice as a state-certified residential real estate appraiser under §§ 339.500 through 339.549, RSMo, as amended, provided Caldwell adheres to all the terms of this agreement.

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

A. Caldwell shall submit written reports to the MREAC by no later than October 1 and March 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

October 1, 2015. 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. Caldwell is responsible for assuring that the reports are submitted to and received by the MREAC.

B. During the disciplinary period, Caldwell 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 October 1 and March 1 during each year of the disciplinary period. The first log shall be submitted on or before October 1, 2015. 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. Caldwell is responsible for assuring that the logs are submitted to and received by the MREAC. Upon MREAC request, Caldwell shall submit copies of his work samples for MREAC review.

C. Within one year after the effective date of this Settlement Agreement, Caldwell shall submit verification to the MREAC of successful completion of a 15-hour qualifying education course, including examination, on report writing.

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

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

F. During the disciplinary period, Caldwell 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, Caldwell 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. Whenever during the disciplinary period Caldwell provides others with a copy of his certification as a Missouri state-certified residential real estate appraiser, Caldwell shall provide the most recent version of his license issued by the MREAC.

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

I. Caldwell 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.

J. During the disciplinary period, Caldwell 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 Caldwell’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.

K. Caldwell 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.

L. Caldwell shall appear before the MREAC or its representative for a personal interview upon the MREAC’s written request.

M. If, at any time within the disciplinary period, Caldwell removes himself from the state of Missouri or state of Kansas, 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.

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

32. 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.

33. This Settlement Agreement does not bind the MREAC or restrict the remedies available to it concerning any future violations by Caldwell of §§ 339.500 through 339.549, RSMo, as amended, or the regulations promulgated thereunder, or of the terms and conditions of this Settlement Agreement.

34. 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.

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

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

37. 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.

38. 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 324, 339, and 610, RSMo, as amended.

39. Caldwell, 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.

40. This 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

William J. Caldwell 3-16-2015
William J. Caldwell Date

Vanessa Beauchamp
Vanessa Beauchamp, Executive Director
Date: 3-25-15

CHRIS KOSTER
Attorney General

Faraz Nayyar

Faraz Nayyar
Assistant Attorney General
Missouri Bar No. 64296

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