

**SETTLEMENT AGREEMENT**  
**BETWEEN**  
**MISSOURI REAL ESTATE COMMISSION**  
**AND**  
**DAVID D. BOONE**

David D. Boone (“Boone”) and the Missouri Real Estate Commission (“MREC”) enter into this Settlement Agreement for the purpose of resolving the question of whether Boone’s license as a real estate broker salesperson, no. 2007003421, will be subject to discipline. Pursuant to § 536.060, RSMo<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 MREC under § 621.110, RSMo (Supp. 2013). The MREC and Boone jointly stipulate and agree that a final disposition of this matter may be effectuated as described below, pursuant to § 621.045, RSMo (Supp. 2013).

Boone 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

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

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 MREC, at which time Boone 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 MREC.

Being aware of these rights provided to him by law, Boone 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.

Boone acknowledges that he has received a copy of documents that were the basis upon which the MREC determined there was cause for discipline, along with citations to law and/or regulations the MREC believes were violated. Boone stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the MREC that Boone's license as a real estate broker salesperson, no. 2007003421 is subject to disciplinary action by the MREC in accordance with the relevant provisions of Chapter 621, RSMo, and Chapter 339, RSMo, as amended.

The parties stipulate and agree that the disciplinary order agreed to by the MREC and Boone in Part II herein is based only on the agreement set out in Part I herein. Boone understands that the MREC 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 MREC or may be discovered.

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

Based upon the foregoing, the MREC and Boone herein jointly stipulate to the following:

1. The MREC is an agency of the State of Missouri, created and established pursuant to § 339.120, RSMo (Supp. 2013), for the purpose of executing and enforcing the provisions of §§ 339.010 to 339.180 and §§ 339.710 to 339.860, RSMo, as amended, relating to real estate agents and brokers.
2. Boone holds a real estate broker salesperson license, no. 2007003421. Boone's license is current and active and has been at all times relevant herein.
3. Boone was the designated broker for BTW LLC at all times relevant herein.
4. From April 10, 2014 through April 24, 2014, the MREC

conducted an audit and examination of the business records and escrow accounts, audit no. LF-814443 (“the audit”) for BTW Realty LLC.

5. BTW Realty LLC is an active Missouri limited liability company, which ceased operations as a real estate company on March 24, 2014.

6. As of March 24, 2014, all management agreements, owner funds, and security deposits were purchased by and/or transferred to Mark F. Braun LLC.

7. The audit period reviewed was March 2013 through March 2014 (“the audit period”).

8. During the audit period, Boone had a property management escrow account at Branson Bank, account no. xx001 (hereinafter “the property management escrow account”).

9. During the audit period, Boone had a security deposit escrow account at Branson Bank, account no. xx036 (hereinafter “the security deposit escrow account”).

10. On March 31, 2014, the property management escrow account was overdrawn in the amount of \$746.08.

11. At the time of the audit, Boone failed to keep adequate records of previous transactions for the property management escrow account, detailed below:

a. The broker could not provide any record of liabilities and

was unable to determine the amount of owner funds that should have been in the account.

- b. The broker was unable to provide an accurate record of transactions.
- c. Entries were made on the broker's register that were not found on the broker's bank statement.
- d. The check register was missing check numbers, which were not accounted for by the broker.

12. At the time of the audit, Boone failed to keep adequate records of previous transactions for the security deposit escrow account, detailed below:

- a. The final bank statement for the security deposit escrow account showed a transfer of \$31,368.26; however, no related transactions were noted.
- b. The broker was unable to provide an accurate record of transactions.
- c. The check register notes missing check numbers, which were not accounted for by the broker.

13. At the time of the audit, Boone allowed service charges to come due on the PME account when funds had not been maintained in the account, causing an overdraft of client's funds.

14. BTW Realty LLC used fictitious business names of "CBHTR,"

“Coldwell Banker,” and “Coldwell Banker Hometeam” without such being registered with either the Secretary of State of the MREC.

15. By Conducting business under these unregistered fictitious names, Boone violated 20 CSR 2250-4.020(1), which states:

(1) Any broker doing business under any name other than the broker’s legal name or any entity doing business under any name other than the name registered with the secretary of state, shall first comply with the provisions of sections 417.200-416.230, RSMo on the registration of fictitious names and shall furnish the commission a copy of the registration within ten (10) days of receipt of the official registration from the secretary of state.

16. By disbursing funds from the property management escrow account when an owner’s balance was not sufficient to cover the disbursement, Boone violated 20 CSR 2250-8.220(1), which states:

A broker shall establish and maintain a separate escrow account(s), to be designated as a property management escrow account(s), for the deposit of current rents and money received from the owner(s) or on the owner’s(s’) behalf for payment of expenses related to property management. Before making disbursements from a property management escrow account, a broker shall ensure that the account balance for that owner’s(s’) property(ies) is sufficient to cover the disbursements.

17. By failing to retain records for his escrow accounts and failing to accurately record transactions on those accounts, Boone violated §339.105.3,

RSMo, which states:

In conjunction with each escrow or trust account a broker shall maintain books, records, contracts and other necessary documents so that the adequacy of said account may be determined at any time. The account and other records shall be provided to the commission and its duly authorized agents for inspection at all times during regular business hours at the broker's usual place of business.

18. By failing to include the related transactions on checks and deposit tickets for the escrow accounts, Boone violated 20 CSR 2250-8.120(6), which states:

Each check written on an escrow account or each corresponding check stub, or other record of disbursement of funds from the account and each deposit ticket shall indicate the related real estate transaction(s). Each check written on an escrow account for commission shall be made payable to the licensee to whom the commission is owed or to the firm's general operating account.

19. Boone's conduct, as described above, constitutes a lack of competence to transact the business of a real estate broker salesperson in such a manner to safeguard the interest of the public.

20. Boone's conduct, as described above, constitutes untrustworthy business dealings and/or demonstrates incompetence, misconduct, or gross negligence.

21. Based on the conduct and violations set forth herein, cause exists to discipline Boone's license under § 339.100.2(1),(15), (16), (19), and (23), RSMo, which state:

2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621, RSMo, against any person or entity licensed under this chapter or any licensee who has failed to renew or has surrendered his or her individual or entity license for any one or any combination of the following acts:

\* \* \*

(1) Failure to maintain and deposit in a special account, separate and apart from his or her personal or other business accounts, all moneys belonging to others entrusted to him or her while acting as a real estate broker or as the temporary custodian of the funds of others, until the transaction involved is consummated or terminated, unless all parties having an interest in the funds have agreed otherwise in writing;

\* \* \*

(15) Violation of, or attempting to violate, directly or indirectly, or assisting or enabling any person to violate, any provision of sections 339.010 to 339.180 and sections 339.710 to 339.860, or of any lawful rule adopted pursuant to sections 339.010 to 339.180 and sections 339.710 to 339.860;

(16) Committing any act which would otherwise be grounds for the commission to refuse to issue a license under section 339.040;

\* \* \*

(19) Any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence;

\* \* \*

(23) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated under sections 339.010 to 339.180 and sections 339.710 to 339.860<sup>2</sup> who is not registered and currently eligible to practice under sections 339.010 to 339.180 and sections 339.710 to 339.860[.]

22. Section 339.040.1, RSMo (Supp. 2013), states:

Licenses shall be granted only to persons who present, and corporations, associations, partnerships, limited partnerships, limited liability companies, and professional corporations whose officers, managers, associates, general partners, or members who actively participate in such entity's brokerage, broker-salesperson, or salesperson business present, satisfactory proof to the commission that they:

\* \* \*

(3) Are competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public.

## 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 MREC in

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<sup>2</sup> Section 339.860 was repealed by S.B. 613 Revision, 2007

this matter under the authority of § 536.060, RSMo, and §§ 621.045.4 and 621.110, RSMo (Supp. 2013).

23. **Boone's license is on probation.** Boone's license as a real estate broker salesperson is hereby placed on PROBATION for a period of FIVE YEARS. The period of probation shall constitute the "disciplinary period." During the disciplinary period, Boone shall be entitled to practice as a real real estate broker salesperson under Chapter 339, RSMo, as amended, provided that Boone adheres to all the terms of this agreement.

24. **Terms and conditions of the disciplinary period.** Terms and conditions of the probation are as follows:

A. Boone shall keep the MREC apprised at all times of his current address and telephone number at each place of residence and business. Boone shall notify the MREC in writing within ten (10) days of any change in this information.

B. Boone shall timely renew his real estate license, timely pay all fees required for license renewal and shall comply with all other requirements necessary to maintain his licenses in a current and active status. During the disciplinary period, Boone shall not place his real estate license on inactive status, as would otherwise be allowed under 20 CSR 2250-4.040. Alternatively, without violating the terms and conditions of this Settlement Agreement, Boone may surrender his real

estate license by submitting a letter to the MREC and complying with 20 CSR 2250-8.155. If Boone applies for a real estate license after surrender, Boone shall be required to re-qualify as if an original applicant and the MREC will not be precluded from basing its decision, wholly or partially, on the findings of fact, conclusions of law, and discipline set forth in this Settlement Agreement.

C. Boone shall meet in person with the MREC or its representative at any such time or place as required by the MREC or its designee upon notification from the MREC or its designee. Said meetings will be at the MREC's discretion and may occur periodically during the probation period.

D. Boone shall immediately submit documents showing compliance with the requirements of this Settlement Agreement to the MREC when requested by the MREC or its designee.

E. During the probationary period, Boone shall accept and comply with unannounced visits from the MREC's representative to monitor compliance with the terms and conditions of this Settlement Agreement.

F. Boone shall comply with all relevant provisions of Chapter 339, RSMo, as amended, all rules and regulations duly promulgated thereunder, all local, state, and federal laws. "State" as used herein

includes the State of Missouri and all other states and territories of the United States. Any cause to discipline Boone's license as a real estate broker salesperson under § 339.100.2, RSMo, as amended, that accrues during the disciplinary period shall also constitute a violation of this Settlement Agreement.

G. **Broker Acknowledgement.** If at any time during the disciplinary period Boone wishes to transfer his license affiliation to a new broker/brokerage, he must submit a Broker Acknowledgment form signed by the new broker. This acknowledgement is in addition to any other required application, fee, and documentation necessary to transfer his license. Boone must obtain the Broker Acknowledgement form from the MREC.

25. Upon the expiration of the disciplinary period, Boones' licenses shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the MREC determines that Boone has violated any term or condition of this Settlement Agreement, the MREC may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke or otherwise lawfully discipline Boone's licenses.

26. No additional discipline shall be imposed by the MREC pursuant to the preceding paragraph of this Settlement Agreement without notice and

opportunity for hearing before the MREC as a contested case in accordance with the provisions of Chapter 536, RSMo.

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

28. This Settlement Agreement does not bind the MREC 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 MREC or may be discovered.

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

30. 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.

31. The parties to this Settlement Agreement understand that the MREC will maintain this Settlement Agreement as an open record of the MREC as required by Chapters 324, 339, and 610, RSMo, as amended.

32. Boone, together with his partners, heirs, assigns, agents, employees, representatives and attorneys, does hereby waive, release, acquit and forever discharge the MREC, 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.

33. Boone understands that he may, either at the time this 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 Boone's license. If Boone desires the Administrative Hearing Commission to review this Settlement Agreement, Boone 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.

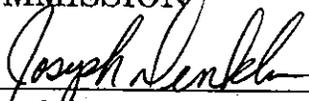
34. If Boone requests review, this Settlement Agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the Settlement Agreement sets forth cause for disciplining Boone's licenses. If the Administrative Hearing Commission issues an order stating that the Settlement Agreement does not set forth cause for discipline, then the MREC may proceed to seek discipline against Boone as allowed by law. If Boone does not request review by the Administrative Hearing Commission, this Settlement Agreement goes into effect 15 days after the document is signed by the Executive Director of the MREC.

LICENSEE

  
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David D. Boone

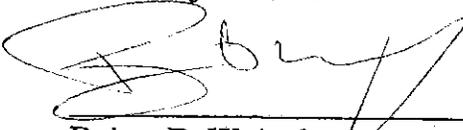
Date: 4-22-2015

MISSOURI REAL ESTATE  
COMMISSION

  
\_\_\_\_\_  
Joseph Denkler, Executive Director

Date: 5/5/2015

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