BEFORE THE
MISSOURI REAL ESTATE COMMISSION

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| In the matter of the application of | ) |
| | ) |
| **Dana Budke** | ) |
| | ) |
| Applicant | ) |

**ORDER OF THE MISSOURI REAL ESTATE COMMISSION REGARDING ISSUANCE OF A PROBATED REAL ESTATE SALESPERSON LICENSE TO DANA BUDKE**

The Missouri Real Estate Commission ("MREC") hereby issues its ORDER granting a PROBATED real estate salesperson license to Dana Budke ("Budke") pursuant to the provisions of § 324.038, RSMo[1]. As set forth in § 324.038, RSMo, Budke may submit a written request for a hearing to the Administrative Hearing Commission seeking review of the MREC's decision to issue a probated real estate salesperson license. Such written request must be filed with the Administrative Hearing Commission within 30 days of the date of delivery or mailing by certified mail of this Order. The written request should be addressed to the Administrative Hearing Commission, Room 640, Truman State Office Building, P.O. Box 1557, Jefferson City, Missouri 65102-1557. If no written request for review is filed with the Administrative Hearing Commission within the 30-day period, the right to seek review of the MREC's decision shall be considered waived.

1 All statutory references are to the Revised Statutes of Missouri, as amended, unless otherwise indicated.

I

## FINDINGS OF FACT

Based upon the foregoing, the MREC hereby states:

1. The MREC is an agency of the State of Missouri created and existing pursuant to § 339.120, RSMo for the purpose of executing and enforcing the provisions of § 339.010 to 339.205 and § 339.710 to 339.860, RSMo and the regulations promulgated thereunder, relating to real estate salespersons and brokers.

2. Budke is a natural person residing at the address of 29570 Rhodes Point, Rocky Mount, Missouri 65072.

3. On or about June 11, 2013, the MREC received Budke's application for a real estate salesperson license ("Application").

4. On her Application, question 4-13, Budke was asked if she had "been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution in this state, or any other state, or of the United States, whether or not sentence was imposed? **NOTE: This includes Suspended Imposition of Sentence, Suspended Execution of Sentence, and alcohol related offenses, i.e. DWI and BAC.**" Budke responded, "YES" to question 4-13.

5. On or about November 19, 2010, in Case No. 10CRO2119, Budke pled guilty in the District Court of Johnson County, Kansas to the crimes of Driving While Under the Influence of Alcohol – Third Offense, a felony offense, and Refusal of the Preliminary Breath Test, a misdemeanor offense.

6. On or about January 21, 2011, in Case No. 10CRO2119, the Court sentenced Budke to 360 days incarceration in the custody of Johnson County, Kansas Jail. The Court suspended the sentence and placed Budke on twelve months probation and required her to serve ninety (90) consecutive days; five days in jail and the remaining eighty-five (85) days on house arrest.

7. The crimes of Driving While Under the Influence of Alcohol – Third Offense and Refusal of the Preliminary Breath Test are offenses of which an essential element is fraud, dishonesty or an act of violence and/or are a crime involving moral turpitude; and the commission of this crime demonstrates a lack of regard for the health, safety, and welfare of the public.

8. The crimes of Driving While Under the Influence of Alcohol – Third Offense and Refusal of the Preliminary Breath Test are offenses reasonably related to the qualifications, functions, and duties of a real estate salesperson.

II

## CONCLUSION OF LAW

9. As a result of the conduct identified in Section I herein, cause exists for the MREC to deny Budke's application for a real estate salesperson license pursuant to § 339.080.1, RSMo, which provides: "The commission may refuse to examine or issue a license to any person known by it to be guilty of any of the acts or practices specified in subsection 2 of section 339.100, . . . ."

10. As a result of the conduct identified in Section I herein, cause exists for the MREC to deny Budke's application for a real estate salesperson license pursuant to the provisions of § 339.100.2(16), (18), and (19), 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:
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> . . . .
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> (16) Committing any act which would otherwise be grounds for the commission to refuse to issue a license under section 339.040;
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> . . . .
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> (18) Been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of this state or any other state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this chapter, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;
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> (19) Any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence; [.]

11. Section 339.040.1 RSMo, provides that licenses shall be issued only to persons of good moral character who bear a good reputation for honesty, integrity, and fair dealing and who are competent to transact the business of a real estate salesperson in a manner so as to safeguard the public's interest.

12. As a result of the criminal conduct identified in Section I herein, Budke has engaged in conduct and has pleaded guilty to crimes that adversely affect her moral

12. As a result of the criminal conduct identified in Section I herein, Budke has engaged in conduct and has pleaded guilty to crimes that adversely affect her moral character, her reputation, and her fitness and qualifications to practice as a real estate salesperson.

13. As an alternative to refusing to issue a license, the MREC may, at its discretion, issue a license subject to probation, pursuant to § 324.038.1, RSMo, which provides:

> Whenever a board within or assigned to the division of professional registration, including the division itself when so empowered, may refuse to issue a license for reasons which also serve as a basis for filing a complaint with the administrative hearing commission seeking disciplinary action against a holder of license, the board, as an alternative to refusing to issue a license, may at its discretion, issue to an applicant a license subject to probation.

14. The MREC issues this Order in lieu of denial of Budke's application for a real estate salesperson license. The MREC has determined that this Order is necessary to ensure the protection of the public.

## III

## TERMS AND CONDITIONS

15. Based on the foregoing, the Missouri real estate salesperson license issued to Budke is subject to the following terms and conditions.

16. **Budke's license is on probation for two years.** Budke's real estate salesperson license is hereby placed on PROBATION for a period of TWO YEARS from the effective date of this Order. During the period of probation on her real estate salesperson license, Budke shall be entitled to practice as a real estate salesperson

provided she adheres to all the terms stated herein. The period of probation shall constitute the "disciplinary period."

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

A. If at any time during the disciplinary period Budke wishes to transfer her license affiliation to a new broker/brokerage, she 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 her license. Budke must obtain the Broker Acknowledgement form from the MREC.

B. Budke shall keep the MREC apprised at all times in writing of her current address and telephone number at each place of residence and business. Budke shall notify the MREC in writing within ten days of any change in this information.

C. Budke shall timely renew her Missouri real estate salesperson license, timely pay all fees required for license renewal, and comply with all other requirements necessary to maintain her license in a current and active state.

D. Budke shall meet in person with the MREC or its representative at any such time and 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.

E. Budke shall immediately submit documents showing compliance with the requirements of this Order to the MREC when requested by the MREC or its designee.

F. During the probationary period, Budke shall accept and comply with unannounced visits from the MREC's representatives to monitor compliance with the terms and conditions of this Order.

G. If at any time within the disciplinary period Budke changes residence from the State of Missouri; ceases to be currently licensed in Missouri under the relevant provisions of Chapter 339, RSMo, as amended; fails to timely pay all fees required for license renewal; or fails to keep the MREC advised of all current places of residence and business, the time of absence, unlicensed status, delinquency in paying fees for license renewal or unknown whereabouts shall not be deemed or taken as any part of the disciplinary period.

H. Budke shall comply with all relevant provisions of Chapter 339, RSMo, as amended; all rules and regulations of the MREC; and all local, state, and federal laws. "State" as used herein refers to the State of Missouri and all other states and territories of the United States.

18. Upon the expiration and successful completion of the disciplinary period, Budke's real estate salesperson license shall be fully restored if all other requirements of the law have been satisfied; provided, however, that in the event the MREC determines that Budke has violated any term or condition of this Order, 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 Budke's real estate salesperson license.

19. No order shall be entered by the MREC pursuant to the preceding paragraph of this Order without notice and an opportunity for hearing before the MREC in accordance with the provisions of Chapter 536, RSMo.

20. If the MREC determines that Budke has violated a term or condition of this Order, which violation would also be actionable in a proceeding before the Administrative Hearing Commission or the circuit court, the MREC may elect to pursue any lawful remedies or procedures afforded it and is not bound by this Order in its determination of appropriate legal actions concerning such violation.

21. If any alleged violation of this Order occurs during the disciplinary period, the MREC 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. The MREC has continuing jurisdiction to hold a hearing to determine if a violation of this Order has occurred.

22. The MREC will maintain this Order as an open and public record of the MREC as provided in Chapters 339, 610, and 324, RSMo.

SO ORDERED AND EFFECTIVE THIS 16TH DAY OFOCTOBER 2013.

Janet Carder, Executive Director
Missouri Real Estate Commission