

SETTLEMENT AGREEMENT
BETWEEN
MISSOURI REAL ESTATE COMMISSION
AND
SHARON L. CLARK

Sharon L. Clark (Clark) and the Missouri Real Estate Commission (MREC) enter into this Settlement Agreement for the purpose of resolving the question of whether Clark's license as a real estate broker, no. 1999027683, 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 MREC under § 621.110, RSMo Supp. 2013. The MREC and Clark jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo Supp. 2013.

Clark acknowledges that she understands the various rights and privileges afforded her by law, including the right to a hearing of the charges against her; 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 her at the hearing; the right to present evidence on her behalf at the hearing; the

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

right to a decision upon the record of the hearing by a fair and impartial administrative hearing commissioner concerning the charges pending against her; 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 Clark 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 her by law, Clark 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 her.

Clark acknowledges that she 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. Clark stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the MREC that Clark's license as a real estate broker, license no. 1999027683, is subject to disciplinary action by the MREC in accordance with the relevant provisions of Chapter 621, RSMo, and §§ 339.010-339.205 and §§ 339.710-339.855, RSMo, as amended.

The parties stipulate and agree that the disciplinary order agreed to by the MREC and Clark in Part II herein is based only on the agreement set out in Part I herein. Clark understands that the MREC may take further disciplinary action against her 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 Clark herein jointly stipulate to the following:

1. Clark is licensed by the MREC as a real estate broker, license no. 1999027683. Clark's license was current and active at all-times relevant herein.

2. On April 16 and 17, 2014, the MREC conducted an audit and examination of Clark's business records and escrow accounts for the period of June 2012 to April 2014. The findings of fact and conclusions of law set forth hereinafter represent the findings of the audits.

Applicable Statutes and Regulations

3. Section 339.100.2(1), (3), (15), (16), and (19), RSMo Supp. 2013

setting forth the grounds for discipline, states in pertinent part:

2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621 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;

.....

(3) Failing within a reasonable time to account for or to remit any moneys, valuable documents or other property, coming into his or her possession, which belongs to others;

.....

(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[.]

4. Section 339.105, RSMo Supp. 2013, regarding the management of escrow accounts, states in pertinent part:

1. Each broker who holds funds belonging to another shall maintain such funds in a separate bank account in a financial institution which shall be designated an escrow or trust account. This requirement includes funds in which he or she may have some future interest or claim. Such funds shall be deposited promptly unless all parties having an interest in the funds have agreed otherwise in writing. No broker shall commingle his or her personal funds or other funds in this account with the exception that a broker may deposit and keep a sum not to exceed one thousand dollars in the account from his or her personal funds, which sum shall be specifically identified and deposited to cover service charges related to the account.
2. Each broker shall notify the commission of his or her intent not to maintain an escrow account, or the name of the financial institution in which each escrow or trust account is maintained, the name and number of each such account, and shall file written authorization directed to each financial institution to allow the commission or its authorized representative to examine each such account; such notification and authorization shall

be submitted on forms provided therefor by the commission. A broker shall notify the commission within ten business days of any change of his or her intent to maintain an escrow account, the financial institution, account numbers, or change in account status.

5. Section 339.730.1(1), RSMo, regarding the duties and obligations of a buyer's agent, states in pertinent part:

A licensee representing a seller or landlord as a seller's agent or a landlord's agent shall be a limited agent with the following duties and obligations:

(1) To perform the terms of the written agreement made with the client[.]

6. Regulation 20 CSR 2250-8.090, regarding brokerage service agreements, states in pertinent part:

(4) Seller's/Lessor's Agency (Sale/Lease Listing) Agreement.

(A) Every written listing agreement or other written agreement for brokerage services shall contain all of the following:

14. All other terms and conditions under which the property is to be sold, leased, or exchanged.

(9) Every written property management agreement or other written authorization between a broker and the owners of the real estate shall:

(H) Contain a statement which permits or prohibits the designated broker and/or affiliated licensee from acting as a disclosed

dual agent and if permitted, the duties and responsibilities of a dual agent;

(I) Contain a statement which permits or prohibits the designated broker and/or affiliated licensee from acting as a transaction broker and if permitted, the duties and responsibilities of a transaction broker;

...
(L) Contain the signatures of all the owners and the broker or affiliated licensee as authorized by the broker[.]

7. Regulation 20 CSR 2250-8.160, regarding the retention of records, states in pertinent part:

(1) Every broker shall retain for a period of at least three (3) years true copies of all business books; accounts, including voided checks; records; contracts; brokerage relationship agreements; closing statements and correspondence relating to each real estate transaction that the broker has handled. The records shall be made available for inspection by the commission and its authorized agents at all times during usual business hours at the broker's regular place of business. No broker shall charge a separate fee relating to retention of records.

8. Regulation 20 CSR 2250-8.220, regarding escrow accounts, states in pertinent part:

(6) Fees or commission payable to a broker must be withdrawn from a property management escrow account at least once a month unless otherwise agreed in writing. Any rent paid in advance as a deposit for the last month's rent or as rent other than

the current month's rent held by a broker shall be deposited in the property management escrow account unless otherwise agreed to in writing.

(7) In addition to the notification required by section 339.105.2, RSMo, each broker, upon the request of the commission or its agent, shall consent to the examination and audit of the broker's property management escrow account(s) by the commission or its agent. As part of the consent, each broker shall execute a form presented to him/her by the commission or its agent entitled Consent to Examine and Audit Escrow or Trust Account.

(8) 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 transaction. Each check written on an escrow account for licensee fees or commission shall be made payable to the licensee who is owed the fee or commission or to the firm's general operating account.

Audit Violations
Inaccurate Owner's Statement

9. During the audit, the MREC examiner noted an inaccuracy in the owner's statement for the real property located at 1551 Redcoat Drive, Maryland Heights, MO 63043 ("Redcoat Property").

10. By failing to maintain an accurate owner's statement for the Redcoat Property, cause exists to discipline Clark's real estate broker license under § 339.100.2(3), RSMo Supp. 2013.

Property Management Escrow Accounts

11. During the audit, the MREC examiner identified multiple problems in two separate property management escrow accounts.

12. For the property management escrow account labeled UMB Checking Account #XXXXXX4888, the MREC examiner identified the following violations:

- i. A shortage of \$6.29 due to a \$5.39 property expense that was incorrectly allocated to the property owner and also due to a \$0.90 overpayment of vendor's invoice and.
- ii. Clark failed to retain a voided check.
- iii. Clark failed to indicate the related transaction on each check written, each corresponding check stub, or other record of disbursement for the account on at least three separate instances.
- iv. Clark opened and closed the property management account without notifying the MREC of said actions.

13. For the property management escrow account labeled UMB Checking Account #XXXXXX0322, the MREC examiner identified the following violations:

- i. A shortage of \$67.00 due to a vendor's invoice being paid twice, and recorded in separate monthly owner statements.
- ii. Clark failed to timely remove funds from the account to reimburse herself for property owner expenses paid out of her pocket in September of 2013, until March 2014 resulting in a commingling of funds between client funds and Clark's funds.
- iii. Clark maintained the property management escrow account without registering said account with the MREC until April 16, 2014.

14. By having a shortage in the property management escrow accounts #XXXXXX4888 and #XXXXXX0322, Clark violated § 339.105.1, RSMo Supp. 2013.

15. By commingling her personal funds with those maintained in the property management escrow account #XXXXXX0322, Clark violated § 339.105.1, RSMo Supp. 2013.

16. By failing to retain all records, Clark violated 20 CSR 2250-8.160(1).

17. By failing to notify the MREC of the property management escrow accounts #XXXXXXX4888 and #XXXXXXX0322, Clark violated § 339.105.2, RSMo Supp. 2013 and 20 CSR 2250-8.220(7).

18. By failing to indicate the related transaction on each check, check stub, or other record of disbursement for the property management escrow account #XXXXXXX4888, Clark violated 20 CSR 2250-8.220(8).

Written Agreements

19. With regard to the real property located at 1717 Goldenhorn Court, Maryland Heights, MO 64304, ("Goldenhorn Property") the MREC examiner identified the following violations:

- i. Clark failed to perform the terms of the written agreement with the seller in that she advertised the property at a higher price than what was agreed to be the listed price.
- ii. Clark failed to include in the listing all terms and conditions under which the property could be sold.

20. Regarding the Redcoat Property, the MREC examiner identified the following violations:

- i. Clark failed to perform the terms of the written agreement with the landlord in that she failed to remove monthly management fees on four separate occasions.

- ii. The management agreement did not include a statement which permitted or prohibited Clark from acting as a transaction broker.
- iii. The management agreement did not contain the signature of all the owners or their authorized agents.

21. With regard to the real property located at 12715 Saddlemaker Court, Maryland Heights, MO 63043 ("Saddlemaker Property"), the management agreement did not include a statement which permitted or prohibited Clark from acting as a dual agent.

22. By failing to perform terms as written in both the Goldenhorn and Redcoat Property Agreements, Clark violated § 339.730.1(1), RSMo.

23. By failing to list all terms and conditions under which the Goldenhorn Property could be sold, Clark violated 20 CSR 2250-8.090(4)(A)(14).

24. By failing to remove monthly management fees for the Redcoat Property, Clark violated 20 CSR 2250-8.220(6).

25. By failing to include a statement permitting or prohibiting herself from acting as a transaction broker in the Saddlemaker Property management agreement, Clark violated 20 CSR 2250-8.090(9)(H).

26. By failing to include a statement permitting or prohibiting herself from acting as a transaction broker in the Redcoat Property management agreement, Clark violated 20 CSR 2250-8.090(9)(I).

27. By failing to have all owners or authorized agents sign the Redcoat Property management agreement, Clark violated 20 CSR 2250-8.090(9)(L).

28. Based on Clark's conduct as stipulated above, cause exists to discipline Clark's license pursuant to § 339.100.2(1), (3), (15), (16), and (19) 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 MREC in this matter under the authority of § 536.060, RSMo, and §§ 621.045.4 and 621.110, RSMo Supp. 2013.

29. **Sharon L. Clark's license is on probation.** Clark's license as a real estate broker is hereby placed on PROBATION for a period of ONE (1) YEAR. The period of probation shall constitute the "disciplinary period." During the disciplinary period, Clark shall be entitled to practice as a real

estate broker under Chapter 339 RSMo, as amended, provided Clark adheres to all the terms of this agreement.

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

A. Clark agrees to pay a civil penalty of \$500. Said penalty is authorized under § 339.205, RSMo Supp. 2013.

B. Clark agrees to pay the \$500 civil penalty by certified check made payable to the "Missouri Real Estate Commission, State of Missouri" and mailed to Missouri Real Estate Commission, P.O. Box 1339, Jefferson City, MO 65102-1339. Clark shall postmark and mail or hand deliver said check within 60 days of the date when this Settlement Agreement becomes effective.

C. In the event the MREC determines that Clark has failed to pay any portion of the \$500 agreed upon herein or has violated any other term or condition of this Settlement Agreement, the MREC may, in its discretion: (1) notify the Attorney General who "may commence an action to recover the amount of the penalty, including reasonable attorney fees and costs and a surcharge of fifteen percent of the penalty plus ten percent per annum on any amounts owed" under § 339.205.4, RSMo Supp. 2013; (2) after an evidentiary hearing, vacate and set aside the penalty imposed herein and

may probate, suspend, revoke, or otherwise lawfully discipline Clark's license under § 324.042, RSMo. Supp. 2013; and (3) deny, discipline, or refuse to renew or reinstate Clark's license under § 339.205.7, RSMo Supp. 2013.

D. Clark shall, within thirty (30) days of the effective date of this agreement, submit the following to the MREC:

- a. Documentation to verify that Clark has corrected the identified \$67 shortage in the property management escrow account #XXXXXX0322
- b. Documentation to verify that Clark has reimbursed owners for the expenses for which they were overcharged. This violation is set forth in paragraph 12.
- c. An explanation of the procedures Clark has implemented to reduce the number of violations caused by inadequate completion of forms.

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

F. Clark shall timely renew her real estate license(s), timely pay all fees required for license renewal and shall comply with all other

requirements necessary to maintain her license(s) in a current and active status. During the disciplinary period, Clark shall not place her real estate license(s) 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, Clark may surrender her real estate license(s) by submitting a letter to the MREC and complying with 20 CSR 2250-8.155. If Clark applies for a real estate license after surrender, Clark shall be required to requalify 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.

G. Clark 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.

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

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

J. Clark 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 Clark's license as a real estate broker under § 339.100.2, RSMo, as amended, that accrues during the disciplinary period shall also constitute a violation of this Settlement Agreement.

K. Broker Acknowledgement. If at any time during the disciplinary period Clark 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. Clark must obtain the Broker Acknowledgement form from the MREC.

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

32. 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.

33. This Settlement Agreement does not bind the MREC or restrict the remedies available to it concerning any future violations by Clark of §§ 339.010-339.205 and §§ 339.710-339.855, 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 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.

35. If any alleged violation of this Settlement Agreement occurred during the disciplinary period, the parties agree that 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. Clark agrees and stipulates that the MREC 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 MREC will maintain this Settlement Agreement as an open record of the MREC as required by Chapters 324, 339, and 610, RSMo, as amended.

39. Clark, together with her 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.

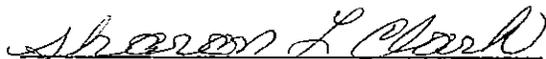
40. Clark understands that she may, either at the time the Settlement Agreement is signed by all parties, or within fifteen days thereafter, submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Clark's license. If Clark desires the Administrative Hearing Commission to review this Settlement Agreement, Clark may submit her request to: Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65102.

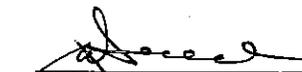
41. If Clark requests review, this Settlement Agreement shall become effective on the date the Administrative Hearing Commission issues

its order finding that the Settlement Agreement sets forth cause for disciplining Clark's license. 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 Clark as allowed by law. If Clark 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 MREC.

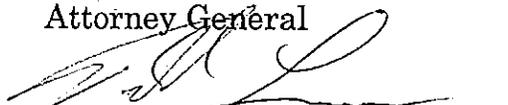
LICENSEE

Missouri Real Estate Commission


Sharon L. Clark
Date: 10-21-14


Janet Carder, Executive Director
Date: 11-25-14

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