

**SETTLEMENT AGREEMENT  
BETWEEN  
MISSOURI REAL ESTATE COMMISSION  
AND  
WESLEY DEWAYNE DAVIS**

RECEIVED  
FEB 27 2014  
MREC

Wesley Dewayne Davis (Davis) and the Missouri Real Estate Commission (MREC) enter into this Settlement Agreement for the purpose of resolving the question of whether Davis's license as a real estate broker, no. 1999089017, and broker associate, no. 2011019183, 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. The MREC and Davis jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo.

Davis 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

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<sup>1</sup> All statutory references are to the Revised Statutes of Missouri, Supp. 2010, unless otherwise indicated.

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 MREC at which time Davis 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, Davis 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.

Davis 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. Davis stipulates that the factual allegations contained in this

Settlement Agreement are true and stipulates with the MREC that Davis's license as a real estate broker is subject to disciplinary action by the MREC in accordance with the relevant provisions of Chapter 621, RSMo, and §§ 339.010 through 339.205 and 339.710 through 339.855, RSMo, as amended.

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

1. Octopus LLC is a Missouri limited liability company, charter no. LC0992180. At all relevant times herein, Octopus LLC was licensed with the MREC as a real estate association, license no. 2009029876. Octopus LLC does business under the fictitious names of

Real Property Management Kansas City which is registered with the MREC and the Missouri Secretary of State.

2. Wesley Dewayne Davis (Davis) holds a license as a real estate broker, no. 1999089017, which at all times relevant herein was current and active, and a license as a broker associate, no. 2011019183, which was canceled September 21, 2012. Davis served as the designated broker of Octopus LLC from June 22, 2011 to September 21, 2012.

3. Peter Gerolymatos, an individual, is the owner of Octopus LLC, and is not and has never been licensed as a real estate broker or salesperson. During the Audit Period, Gerolymatos supervised and conducted the real estate management business of Octopus LLC. Gerolymatos received commissions and/or other valuable consideration for his real estate management services provided through Octopus LLC.

4. From October 25, 2011 through December 6, 2011, the MREC conducted an audit and examination of Octopus LLC's business records and escrow accounts (Audit) for the period of October 2010 to October 2011 (Audit Period). The findings of fact and conclusions of law set forth hereinafter represent the findings of the Audit.

5. Davis is culpable for the conduct and violations revealed by the MREC's audit of Octopus LLC during the time he served as the designated broker.

6. As the designated broker from June 22, 2011 Davis bears responsibility for his own conduct as well as that of Octopus LLC. Davis failed to properly supervise and manage the real estate practice of Octopus LLC by being in the office only every couple of weeks, by allowing the unlicensed Gerolymatos to manage the real estate management affairs and retain sole control over the escrow accounts, and by failing to be familiar with the property management software, procedures and activities of Octopus LLC, in violation of 20 CSR 2250-8.020(1), which states:

(1) Individual brokers, designated brokers, and office managers/supervising brokers shall be responsible for supervising the real estate related activities including the protection of any confidential information as defined under 339.710.8, RSMoof all licensed and unlicensed persons associated with them, whether in an individual capacity or through a corporate entity, association or partnership.

7. Throughout the audit period, Octopus LLC by and through Gerolymatos, managed 144 properties for 71 owners in violation of §§ 339.020 and 339.180.1, RSMo.

8. Section 339.020, RSMo, states:

It shall be unlawful for any person, partnership, limited partnership, limited liability company, association, professional corporation, or corporation, foreign or domestic, to act as a real estate broker, real estate broker-salesperson, or real estate salesperson, or to advertise or assume to act as such without a license first procured from the commission.

9. Section 339.180.1, RSMo, regarding unlicensed activity, states in part:

1. It shall be unlawful for any person or entity not licensed under this chapter to perform any act for which a real estate license is required. . . .

10. For ten of the properties managed by Octopus LLC, Octopus LLC failed to obtain and/or maintain current management agreements, in violation of § 339.780.2, RSMo, and 20 CSR 2250-8.200(1).

11. Section 339.780.2, states as follows:

Before engaging in any of the activities enumerated in section 339.010, a designated broker intending to establish a limited agency relationship with a seller or landlord shall

enter into a written agency agreement with the party to be represented. The agreement shall include a licensee's duties and responsibilities specified in section 339.730 and the terms of compensation and shall specify whether an offer of subagency may be made to any other designated broker.

12. Rule 20 CSR 2250-8.200(1), states as follows:

(1) When managing property a licensee shall not rent or lease, offer to rent or lease, negotiate, or offer or agree to negotiate, the rent or lease, list or offer to list for lease or rent, assist or direct in procuring of prospects calculated to result in the lease or rent, assist or direct in the negotiation of any trans-action calculated or intended to result in the lease or rent, or show that property to prospective renters or lessees unless the licensee's broker holds a current written property management agreement or other written authorization signed by the owner of the real estate or the owner's authorized agent.

(2) A licensee who is managing the leasing or rental of real estate shall not act as an agent in the sale or exchange of that real estate unless the licensee complies with the requirements of 20 CSR 2250-8.090.

13. According to the October 2011 owner's statements maintained by Octopus LLC, Octopus LLC should be holding rents and security deposits on behalf of its clients in an amount of \$63,429.14, but the reconciled bank statements for such period show a balance of \$13,462.56 leaving a shortage of \$49,966.56, in violation of § 339.105.1, RSMo.

14. 339.105.1, RSMo, states,

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.

15. Based on Davis's conduct, cause exists to discipline Davis's license pursuant to § 339.100.2(1), (7), (15), (16), (19), and (23), RSMo, which states:

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;

.....

(7) Paying a commission or valuable consideration to any person for acts or services performed in violation of sections 339.010 to 339.180 and sections 339.710 to 339.860\*;

.....

(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\* who is not registered and currently eligible to practice under sections 339.010 to 339.180 and sections 339.710 to 339.860\*.[.]

## **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 §§ 621.045.3 and 621.110, RSMo.

1. **Davis's license is on probation.** Davis's license no. 1999089017 as a real estate broker is hereby placed on PROBATION for a period of TWO YEARS. The period of probation shall constitute the "disciplinary period." During the disciplinary period, Davis shall be entitled to practice as a real estate broker associate under Sections 339.010 through 339.205 and 339.710 through 339.855, RSMo, as amended, provided Davis adheres to all the terms of this agreement.

2. **Terms and conditions of the disciplinary period.**

Terms and conditions of the probation are as follows:

- a. Davis shall keep the MREC apprised at all times of his current address and telephone number at each place of residence and business. Davis shall notify the MREC in writing within ten (10) days of any change in this information.
- b. Davis 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 license(s) in a current and active status. During the disciplinary period, Davis 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, Davis may surrender his real estate license by submitting a letter to the MREC and complying with 20 CSR 2250-8.155. If Davis applies for a real estate license after surrender, Davis 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.

- c. Davis 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. Davis 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, Davis 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. Davis 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.

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

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.

This Settlement Agreement does not bind the MREC or restrict the remedies available to it concerning any future violations by Davis of Sections 339.010 through 339.205 and 339.710 through 339.855, as amended, or the regulations promulgated thereunder, or of the terms and conditions of this Settlement Agreement.

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.

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

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

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.

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

Davis, 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

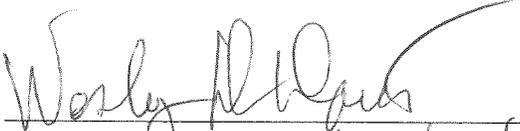
its litigation or from the negotiation or execution of this Settlement Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of the Settlement Agreement in that it survives in perpetuity even in the event that any court or administrative tribunal deems this agreement or any portion thereof void or unenforceable.

Davis understands that he 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 Davis's license. If Davis desires the Administrative Hearing Commission to review this Settlement Agreement, Davis 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.

If Davis 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 Davis'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 Davis as allowed by

law. If Davis 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.

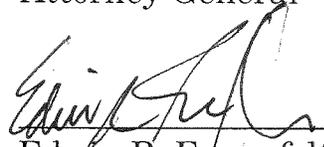
LICENSEE

  
\_\_\_\_\_  
Wesley D. Davis  
Date: 2/10/14

Missouri Real Estate Commission

  
\_\_\_\_\_  
Janet Carder, Executive Director  
Date: Feb 27, 2014

CHRIS KOSTER  
Attorney General

  
\_\_\_\_\_  
Edwin R. Frownfelter  
Assistant Attorney General  
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Attorneys for the MREC

## ADDENDUM TO SETTLEMENT AGREEMENT

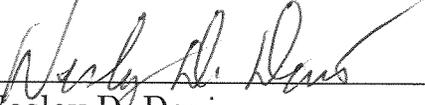
This Agreement amends and supplements a Settlement Agreement entered into by the Missouri Real Estate Commission and Wesley Dewayne Davis, executed February 27, 2014.

The parties agree that Paragraph 1 on Page 10 of the Settlement Agreement shall be amended to read as follows:

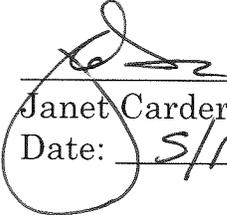
1. **Davis's license is on probation.** Davis's licenses no. 1999089017 as a real estate broker and no. 2011019183 as a broker associate, are hereby placed on PROBATION for a period of TWO YEARS. The period of probation shall constitute the "disciplinary period." During the disciplinary period, Davis shall be entitled to practice as a real estate broker associate under Sections 339.010 through 339.205 and 339.710 through 339.855, RSMo, as amended, provided Davis adheres to all the terms of this agreement.

All provisions of the Settlement Agreement shall apply to both licenses. Whenever the term "license" is used in the singular, it shall be understood to refer to both licenses in the plural.

LICENSEE

  
\_\_\_\_\_  
Wesley D. Davis  
Date: 5/6/14

Missouri Real Estate Commission

  
\_\_\_\_\_  
Janet Carder, Executive Director  
Date: 5/15/14

CHRIS KOSTER  
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