

SETTLEMENT AGREEMENT BETWEEN
MISSOURI REAL ESTATE COMMISSION AND MARIE E. GREEN

Marie E. Green ("Green") and the Missouri Real Estate Commission ("MREC") enter into this Settlement Agreement for the purpose of resolving the question of whether Green's license as a real estate salesperson, no. 1999056085, 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. 2010. The MREC and Green jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo Supp. 2010.

Green 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 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 Green may present

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

evidence in mitigation of discipline; the right to seek 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, Green 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.

Green 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. Green stipulates, for the sole purpose of settlement of this case, that the factual allegations contained in this Settlement Agreement are true and stipulates with the MREC that Green's license as a real estate ~~broker~~, license no. 1999056085, 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.

3d person jc 11/22/11 805
~~broker~~

The parties stipulate and agree that the disciplinary order agreed to by the MREC and Green in Part II herein is based only on the agreement set out in Part I herein. Green 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, and for the sole purpose of settlement, the MREC and Green 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, 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 real estate brokers.

2. At all relevant times hereto, Green held a real estate salesperson license, no. 1999056⁸⁰⁵~~885~~. *8c 11/22/11*

3. Jurisdiction and venue are proper before the Administrative Hearing Commission pursuant to §§ 339.100 and 621.045, RSMo, as amended.

4. William Head ("Head") was the listing agent for David Smith ("Smith") in Smith's sale of a property located at 7405 E. 56th Terrace, Kansas City, Missouri ("the subject property").

5. On or about September 20, 2006, Head listed the subject property at \$79,900.

6. On or about September 25, 2006, Tina and Reginald Harris ("Harris") entered into a buyer's agent contract with Green.

7. On or about October 20, 2006, Head listed the subject property at \$89,900.

8. On or about October 25, 2006, First United Mortgage pre-approved Harris for a loan totaling \$82,350 pursuant to a signed and executed sales contract for \$91,500.

9. On or about November 4, 2006, Harris and Smith entered into an initial real estate contract for \$91,500, with \$82,350 due to be financed, and approximately another \$9,150 due from Harris in the form of certified funds at closing (hereinafter "the transaction").

10. Sometime before the closing date, Green and Head discussed the inability of Harris acquiring the down payment required for their purchase of the subject property and the possibility of having Smith provide the funds needed for Harris' down payment.

11. After Head discussed with Smith the possibility of having Smith provide the down payment funds, Smith proceeded to wire approximately \$10,000 into Harris' bank account.

12. On or about December 18, 2006, the parties met for closing and Harris learned that they were required to provide approximately \$10,000 as a down payment for the subject property. Harris was then informed by Green that Smith had transferred approximately \$10,000 into Harris' bank account, which was to be used as Harris' down payment.

13. Later that day, Harris obtained a cashier's check for the amount of \$10,894.07 and used the check as the down payment in their purchase of the subject property.

14. The residential real estate sale contract, including its financial addendum, executed by Harris and Smith on November 4, 2006, indicates that Harris would provide the balance of the purchase price in certified funds on or before the closing date. The

settlement statement executed by Harris and Smith on December 15, 2006 indicates that Harris was providing cash in the amount of \$10,894.07.

15. Despite being aware of the fact that Smith was providing the funds for the down payment on Harris' purchase of the subject property, neither Head nor Green amended the residential real estate sale contract or the settlement statement executed by Harris and Smith to correctly reflect that the down payment funds had been provided by Smith.

16. Section 339.100.2, RSMo, provides, in relevant part:

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:

* * *

(2) Making substantial misrepresentations or false promises or suppression, concealment or omission of material facts in the conduct of his or her business or pursuing a flagrant and continued course of misrepresentation through agents, salespersons, advertising or otherwise in any transaction;

* * *

(4) Representing to any lender, guaranteeing agency, or any other interested party, either verbally or through the preparation of false documents, an amount in excess of the true and actual sale price of the real estate or terms differing from those actually agreed upon;

* * *

(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[.]

17. Section 339.040.1, RSMo Supp. 2009, states in pertinent part:

1. Licenses shall be granted only to persons who present, and corporations, associations, or partnerships whose officers, associates, or partners present, satisfactory proof to the commission that they:

- (1) Are persons of good moral character; and
- (2) Bear a reputation for honesty, integrity, and fair dealing; and
- (3) Are competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public.

18. Section 339.740, RSMo, states:

1. A licensee representing a buyer or tenant as a buyer's or tenant's agent shall be a limited agent with the following duties and obligations:

- (1) To perform the terms of any written agreement made with the client;
- (2) To exercise reasonable skill and care for the client;
- (3) To promote the interests of the client with the utmost good faith, loyalty, and fidelity, including:
 - (a) Seeking a price and terms which are acceptable to the client, except that the licensee shall not be obligated to seek other properties while the client is a party to a contract to purchase property or to a lease or letter of intent to lease;
 - (b) Presenting all written offers to and from the client in a timely manner regardless of whether the client is already a party to a contract to purchase property or is already a party to a contract or a letter of intent to lease;
 - (c) Disclosing to the client adverse material facts actually known or that should have been known by the

licensee; and

(d) Advising the client to obtain expert advice as to material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee;

(4) To account in a timely manner for all money and property received;

(5) To comply with all requirements of sections 339.710 to 339.860, subsection 2 of section 339.100, and any rules and regulations promulgated pursuant to those sections; and

(6) To comply with any applicable federal, state, and local laws, rules, regulations, and ordinances, including fair housing and civil rights statutes or regulations.

19. 15 C.S.R. 60-9.110 provides:

Concealment, Suppression, or Omission of any Material Fact in General:

(1) Concealment of a material fact is any method, act, use or practice which operates to hide or keep material facts from consumers.

(2) Suppression of a material fact is any method, act, use or practice which is likely to curtail or reduce the ability of consumers to take notice of material facts which are stated.

(3) Omission of a material fact is any failure by a person to disclose material facts known.

20. The conduct of Green, as alleged in this Complaint, constitutes making substantial misrepresentations or false promises or suppression, concealment, or omission of material facts in the conduct of their business and/or pursuing a flagrant and continued course of misrepresentation through agents, salespersons, advertising or otherwise in a transaction, providing cause to discipline the real estate salesperson license of Green pursuant to § 339.100.2(2), RSMo Supp. 2006, and, alternatively, § 339.100.2(2), RSMo Supp. 2010.

21. The conduct of Green , as alleged in this Complaint, constitutes representing to any lender, guaranteeing agency, or any other interested party, either verbally or through the preparation of false documents, an amount in excess of the true and actual sale price of the real estate or terms differing from those actually agreed upon, providing cause to discipline the real estate salesperson license of Green pursuant to § 339.100.2(2), RSMo Supp. 2006, and, alternatively, § 339.100.2(2), RSMo Supp. 2010.

22. The conduct of Green, as alleged in this Complaint, constitutes that Green did not follow the duties and obligations as the buyer's agent for Harris because she failed to exercise reasonable skill and care for her client, failed to promote the interests of her client with the utmost good faith, loyalty, and fidelity, and failed to comply with applicable federal, state, and local laws, rules, regulations, and ordinances, in violation of § 339.740, RSMo, providing cause to discipline the real estate salesperson license of Green pursuant to § 339.100.2(15), RSMo Supp. 2006, and, alternatively, § 339.100.2(15), RSMo Supp. 2010.

23. The conduct of Green, as alleged in this Complaint, constitutes committing any act which would otherwise be grounds for the Administrative Hearing Commission to refuse to issue a license under § 339.040, providing cause to discipline the real estate salesperson license of Green pursuant to § 339.100.2(2), RSMo Supp. 2006, and, alternatively, § 339.100.2(2), RSMo Supp. 2010.

24. The conduct of Green, as alleged in this Complaint, constitutes untrustworthy, improper, and/or fraudulent business dealings and/or demonstrates bad

faith and/or incompetence, misconduct, and/or gross negligence, providing cause to discipline the real estate salesperson license of Green pursuant to § 339.100.2(2), RSMo Supp. 2006, and, alternatively, § 339.100.2(2), RSMo Supp. 2010.

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 Supp. 2010.

1. **Green's real estate salesperson license is voluntarily surrendered and all indicia of licensure shall be surrendered immediately.** Green's license as a salesperson is hereby VOLUNTARILY SURRENDERED and ALL INDICIA OF LICENSURE SHALL BE SURRENDERED IMMEDIATELY upon this Settlement Agreement becoming effective.

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

3. 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.

4. Each party agrees to pay all their own fees and expenses incurred as a result

of this case, its litigation, and/or its settlement.

5. 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.

6. 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.

7. Green, 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.

8. This Settlement Agreement shall become effective 15 days after the document is signed by the Executive Director of the MREC. Upon full execution and finalization of this Settlement Agreement between the parties, including proper signatures from each party, the MREC agrees to dismiss, with prejudice, its case against Green currently pending before the Administrative Hearing Commission.

LICENSEE

Missouri Real Estate Commission .

Marie E. Green
Marie E. Green
Date: 11-15-11

Janet Carder
Janet Carder, Executive Director
Date: November 22, 2011

CHRIS KOSTER
Attorney General

Kevin Hail
KEVIN HAIL
Assistant Attorney General
Missouri Bar No. 48763

Supreme Court Building
207 W. High Street
Jefferson City, MO 65102
Telephone: 573-751-1444
Telefax: 573-751-5660

ATTORNEYS FOR
Missouri Real Estate Commission