

SETTLEMENT AGREEMENT
BETWEEN
MISSOURI REAL ESTATE COMMISSION,
J & K RENTALS LLC
AND
JOSEPH CHESTER LEMAY

J & K Rentals LLC, (“J & K Rentals”), Joseph Chester LeMay (“LeMay”) and the Missouri Real Estate Commission (“MREC”) enter into this Settlement Agreement for the purpose of resolving the question of whether J & K Rentals’ license as a real estate association, license no. 2002010378, and LeMay’s licenses as a real estate broker and a real estate broker associate, license nos. 2002010462, 2002010461, and 1999004262, 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. 2012. The MREC, J & K Rentals, and LeMay jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo Supp. 2012.

J & K Rentals and LeMay acknowledge that they understand the various rights and privileges afforded them by law, including the right to a

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

hearing of the charges against them; 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 them at the hearing; the right to present evidence on their 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 them; 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 J & K Rentals and LeMay 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 them by law, J & K Rentals and LeMay knowingly and voluntarily waive each and every one of these rights and freely enter into this Settlement Agreement and agree to abide by the terms of this document as they pertain to them.

J & K Rentals and LeMay acknowledge that they have received a copy of documents upon which the MREC determined there was cause for discipline, along with citations to law and/or regulations the MREC believes were violated. J & K Rentals and LeMay stipulate that the factual

allegations contained in this Settlement Agreement are true. J & K Rentals and LeMay also stipulate with the MREC that J & K Rentals' license as a real estate association, license no. 2002010378, and LeMay's real estate broker and real estate broker associate licenses, license nos. 2002010462, 2002010461, and 1999004262 are 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, J & K Rentals, and LeMay in Part II herein is based only on the agreement set out in Part I herein. J & K Rentals and LeMay understand that the MREC may take further disciplinary action against them 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, J & K Rentals and LeMay herein jointly stipulate to the following:

1. The MREC is an agency of the State of Missouri created and existing pursuant to § 339.120, RSMo Supp. 2012, 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 salespersons and brokers.

2. J & K Rentals is a licensed as a real estate association under license no. 2002010378. At all times relevant herein, J & K Rentals' license was current and active.

3. LeMay is a licensed real estate broker associate for J & K Rentals under license no. 2002010462. LeMay is also licensed as a real estate broker associate for LeMay Realty, LLC under license no. 2002010461. At all times relevant herein, LeMay's real estate broker associate licenses, nos. 2002010462 and 2002010461, were current and active. LeMay's broker license no. 1999004262 was not active since it expired on June 30, 2004.

4. LeMay is the designated broker for J & K Rentals, and as such, bears responsibility for his own conduct, as well as that of J & K Rentals and its affiliates.

5. From April 13, 2011 through June 7, 2011, the MREC conducted an audit of J & K Rentals' and LeMay's real estate activity for the period from June 2010 through May 2011 ("the audit").

6. The audit showed that, in thirty-four instances, LeMay charged management fees that were incorrect under written agreements with the property owners.

7. During the audit period, J & K Rentals had a property management escrow account at First Community Bank, account no.12000299 (hereinafter “property management escrow account”).

8. The audit revealed the following problems with the handling of property management escrow account:

- i. In 140 instances, LeMay did not remove all of the management fees from the property management escrow account on a monthly basis. This resulted in funds due to J & K Rentals and/or LeMay being commingled in the account with funds belonging to third parties.
- ii. LeMay paid numerous personal and/or business expenses out of the property management escrow account.
- iii. In eleven instances, LeMay paid owner expenses from the property management escrow account when that owner’s balance was not sufficient to cover the expense.
- iv. An identified overage of \$5,277.31 occurred in the property management escrow account because management fees were not removed.
- v. A net shortage of \$2,271.42 occurred in the property management escrow account as a result of bank charges

and fees, excess management fees taken, and brokerage bills paid from the account.

9. During the audit period, J & K Rentals had a security deposit escrow account at First Community Bank, account no.12000302 (hereinafter “security deposit escrow account”).

10. The audit revealed that LeMay did not remove interest from the security deposit escrow account on a timely basis.

11. On December 21, 2011, the MREC sent a letter to LeMay, instructing him to obtain the services of a certified public accountant (CPA) to reconcile his escrow accounts and to submit CPA reports to the MREC quarterly. The December 21, 2011 letter also instructed LeMay to respond within thirty days and to provide documentation showing that he had corrected problems identified in the audit, including overages and shortages in the escrow accounts and an expired fictitious name registration.

12. On January 30, 2012, the MREC sent LeMay another letter stating that it had not received a complete response to the December 21, 2011 letter and giving him until March 2, 2012 to reply.

13. On March 6, 2012, the MREC received correspondence from LeMay dated March 2, 2012. However, the correspondence did not contain documentation showing that corrections were made to the escrow accounts.

14. On March 14, 2012, the MREC sent LeMay another letter identifying the requested documentation that had not yet been submitted. That letter gave LeMay until April 14, 2012 to respond.

15. LeMay did not respond to the March 14, 2012 letter.

16. On May 10, 2012, the MREC sent LeMay a letter stating that it had not received a response to the March 14, 2012 letter or the requested CPA reports. The May 10, 2012 letter gave LeMay until June 10, 2012 to respond and to provide the CPA reports.

17. LeMay did not submit the requested CPA reports and did not respond to the May 10, 2012 letter.

18. By charging incorrect management fees, J & K Rentals and LeMay failed to perform the terms of the written agreements with their clients and, therefore, violated Section 339.730.1(1), RSMo., which states:

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[.]

19. By failing to remove management fees from the property management account, J & K Rentals and LeMay violated 20 CSR 2250-8.220(6), which states in part:

Fees or commissions payable to a broker must be withdrawn from a property management escrow account at least once a month unless otherwise agreed in writing.

20. By holding broker fees in the property management escrow account and paying personal and/or business expenses from the property management escrow account, J & K Rentals and LeMay violated Section 339.105.1, RSMo., which 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.

21. By disbursing funds from the property management escrow account when the owner's balance was not sufficient to cover the disbursement, J & K Rentals and LeMay 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.

22. J & K Rentals' and LeMay's failure to remove interest from the security deposit escrow account within 10 days violated 20 CSR 2250-8.120(4), which states:

(4) Each broker shall deposit into the escrow or trust account all funds coming into the broker's possession as set out in section 339.100.2(1), RSMo, including funds in which the broker may have some future interest or claim and including, but not limited to, earnest money deposits, prepaid rents, security deposits, loan proceeds, and funds paid by or for the parties upon closing of the transaction. No broker shall commingle personal funds or other funds in the broker's escrow account except to the extent provided by section 339.105.1, RSMo. Commissions payable must be removed from the escrow account at the time the transaction is completed. After the transaction is completed, interest payable shall be disbursed to the appropriate party(ies) from the escrow account no later than ten (10) banking days following the receipt of the next statement of the escrow account. When the licensee receives all interest earned, interest payable to a licensee must be removed from the escrow account within ten (10) banking days following the receipt of the next statement of the escrow account.

23. Because LeMay failed to respond in writing to the MREC's written requests or inquiries, as set forth herein, LeMay violated 20 CSR 2250-8.170(1), which states:

Failure of a licensee to respond in writing, within thirty (30) days from the date of the commission's written request or inquiry, mailed to the licensee's address currently registered with the commission, will be sufficient grounds for taking disciplinary action against that licensee.

24. § 339.040.1, RSMo, which sets forth requirements for licensure, 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:

(1) Are persons of good moral character; 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.

25. J & K Rentals' and LeMay's conduct, as described above, constitutes a lack of integrity and fair dealing, and demonstrates a lack of competence to transact the business of a real estate broker in such a manner as to safeguard the interest of the public.

26. J & K Rentals' and LeMay's conduct, as described above, constitutes untrustworthy or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence.

27. Based on the conduct and violations set forth herein, cause exists to discipline the real estate licenses of J & K Rentals and LeMay under § 339.100.2(1), (15), (16), and (19), RSMo Supp. 2012, 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[.]

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. 2011.

28. **J & K Rentals' and LeMay's licenses are revoked and all indicia of licensure shall be surrendered immediately.** J & K Rentals' license as a real estate association and LeMay's licenses as a real estate broker associate, are hereby REVOKED and ALL INDICIA OF LICENSURE SHALL BE SURRENDERED IMMEDIATELY upon this Settlement Agreement becoming effective.

29. This Settlement Agreement does not bind the MREC or restrict the remedies available to it concerning any future violations by J & K Rentals and LeMay of Chapter 339, RSMo, as amended, or the regulations

promulgated thereunder, or of the terms and conditions of this Settlement Agreement.

30. 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.

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

32. 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.

33. 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.

34. J & K Rentals and LeMay, together with their partners, members, managers, heirs, assigns, agents, employees, representatives and attorneys, do 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.

35. J & K Rentals and LeMay understand that they 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 J & K Rentals' and LeMay's licenses. If J & K Rentals and LeMay desire the Administrative Hearing Commission to review this Settlement Agreement, J & K Rentals and LeMay may submit

their request to: Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65102.

36. If J & K Rentals and LeMay request 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 J & K Rentals' and LeMay'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 J & K Rentals and LeMay as allowed by law. If J & K Rentals and LeMay do 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

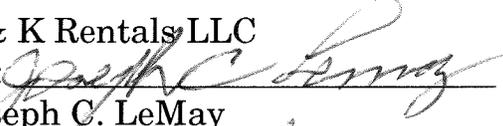
MISSOURI REAL ESTATE
COMMISSION



Joseph Chester LeMay Date



Janet Carder, Executive Director
Date: Oct. 29, 2013

J & K Rentals LLC
By: 

Joseph C. LeMay
Title: Broker/Manager
Date: 10/16/13

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