

SETTLEMENT AGREEMENT
BETWEEN
MISSOURI REAL ESTATE COMMISSION
AND
RENEE L. OTTINGER

Renee L. Ottinger (Ottinger) and the Missouri Real Estate Commission (MREC) enter into this Settlement Agreement for the purpose of resolving the question of whether Ottinger's license as a real estate broker associate, no. 2001022125, 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. The MREC and Ottinger jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo.

Ottinger 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, as amended, 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 Ottinger 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, Ottinger 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.

Ottinger 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. Ottinger stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the MREC that Ottinger's license as a real estate broker associate, license no. 2001022125, is 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 and Ottinger in Part II herein is based only on the agreement set out in Part I herein. Ottinger 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 Ottinger 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, for the purpose of executing and enforcing the provisions of §§ 339.010 to 339.180 and §§ 339.710 to 339.860, RSMo, relating to real estate salespersons and brokers.
2. Renee Ottinger (Ottinger) is licensed as a real estate broker associate, license no. 2001022125. At all times relevant herein, Ottinger's real estate license was current and active.
3. Amanda Enterprises LLC, a Missouri limited liability company, is licensed as a real estate association, license no. 2000175982. At all times relevant herein, Amanda Enterprises LLC's real estate license was current and active.

4. Between April and July 2013, the MREC conducted an audit of Ottinger's and Amanda Enterprises LLC's real estate activity from April 2012 through April 2013 (the "audit period").

5. From February 23, 2009 thru December 9, 2013, including the audit period, Ottinger was the designated broker for Amanda Enterprises LLC, and as such, bears responsibility for her own conduct as well as that of Amanda Enterprises LLC and its affiliates during the audit period.

6. Section 339.710(12), RSMo, defines the term "designated broker" and provides:

"Designated broker", any individual licensed as a broker who is operating pursuant to the definition of "real estate broker" as defined in section 339.010, or any individual licensed as a broker who is appointed by a partnership, association, limited liability corporation, or a corporation engaged in the real estate brokerage business to be responsible for the acts of the partnership, association, limited liability corporation, or corporation. Every real estate partnership, association, or limited liability corporation, or corporation shall appoint a designated broker[.]

7. Rule 20 CSR 2250-8.020(1), regarding the supervision of real estate related activities of a brokerage, states in part:

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, RSMo of all licensed and unlicensed persons associated with them, whether in an

individual capacity or through a corporate entity, association or partnership.

8. Rule 20 CSR 2250-8.120(7), regarding the management of escrow accounts, states:

The designated broker and the branch office manager shall be responsible for the maintenance of the escrow account and shall ensure the brokerage's compliance with the statutes and rules related to the brokerage escrow account(s).

Applicable Law

9. Section 339.100.2, RSMo, states in pertinent part:

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;

(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;

(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[.]

10. Section 339.040.1, RSMo, 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.

11. Section 339.105.1 and .3, RSMo, states:

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.

3. In conjunction with each escrow or trust account a broker shall maintain books, records, contracts and other necessary documents so that the adequacy of said account may be determined at any time. The account and other records shall be provided to the commission and its duly authorized agents for inspection at all times during regular business hours at the broker's usual place of business.

12. Section 339.730.1, RSMo, 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[.]

13. State Regulation 20 CSR 2250-8.120(4) states:

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.

14. State Regulation 20 CSR 2250-8.220 states in pertinent part:

(1) 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.

(2) All security deposits held by a broker shall be maintained, intact, in an escrow account other than the property management escrow account(s), pursuant to section 339.105, RSMo., unless the owner(s) have agreed otherwise in writing.

(3) All money received by a broker in connection with any property management must be deposited within ten (10) banking days to the escrow or trust account maintained by the broker.

(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.

The Audit

15. The audit revealed a number of violations of the real estate laws and regulations during the audit period, as follows:

a. Amanda Enterprises LLC failed to deposit rent into the property management escrow account on at least twelve occasions, in violation of §§ 339.100.2(1) and 339.105.1, RSMo, and State Regulations 20 CSR 2250-8.120(4), and 20 CSR 2250-8.220 (3).

b. Amanda Enterprises LLC engaged in improper business dealings in two ways, providing cause to discipline Ottinger's license pursuant to Section 339.100.2(19), RSMo:

i. Amanda Enterprises LLC linked both the brokerage operating account and the property management escrow account together so that, if the brokerage operating account ever became overdrawn, the brokerage operating account would draw funds from the property management escrow account to cover any

negative balance. This occurred approximately ninety-four times resulting in \$181,156.96 being withdrawn from the property management escrow account for this purpose; and

ii. Amanda Enterprises LLC failed to perform the terms of the written property management agreements by assessing a surcharge on maintenance invoices and paid the surcharges to Amanda Enterprises LLC.

c. Amanda Enterprises LLC made substantial misrepresentations, concealed or omitted material facts in the conduct of its business and/or pursued a flagrant and continued course of misrepresentation through its agents, providing cause to discipline Ottinger's license pursuant to §§ 339.100.2(2), RSMo, by assessing a surcharge to its clients on maintenance invoices without written authorization, paying the unauthorized surcharge to itself, and misrepresented the full amount of the maintenance bill by not itemizing the surcharge on the owner's statement.

d. Amanda Enterprises LLC transferred funds from the security deposit escrow account to the brokerage operating account on two occasions totaling \$11,316.71 and failed to record the transfers on

its check register, in violation of § 339.105.1 and .3, RSMo, and State Regulation 20 CSR 2250-8.220(2) and (8).

e. On approximately ninety-six occasions, Amanda Enterprises LLC commingled funds from the property management escrow account, in violation of § 339.105.1, RSMo.

f. In fifteen instances, Amanda Enterprises LLC disbursed funds on behalf of an owner when the owner's balance was not sufficient to cover the disbursement, in violation of State Regulation 20 CSR 2250-8.220(1).

g. Based on the conduct stipulated to herein, Amanda Enterprises LLC failed to perform the terms of the written agreement made with its client, in violation of 339.730.1, RSMo.

16. Because Amanda Enterprises LLC violated §§ 339.105.1 & .3 and 339.730.1, RSMo, and State Regulations 20 CSR 2250-8.120(4) and 20 CSR 2250-8.220(1), (2), (3), and (8), there is cause to discipline Ottinger's license pursuant to § 339.100.2(15), RSMo.

17. Based on the conduct set forth herein, Ottinger has failed to demonstrate she is of good moral character, and is competent to transact the business of a broker or salesperson in such a manner as to safeguard the

interest of the public, providing cause to discipline Ottinger's license pursuant to § 339.100.2(16), RSMo.

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.

18. **Ottinger's license is on probation.** Ottinger's license as a real estate broker associate is hereby placed on PROBATION for a period of **THREE (3) YEARS**. The period of probation shall constitute the "disciplinary period." During the disciplinary period, Ottinger shall be entitled to practice as a real estate broker associate under Chapter 339, RSMo, as amended, provided Ottinger adheres to all the terms of this agreement.

19. **Terms and conditions of the disciplinary period.** The terms and conditions of the disciplinary period are as follows:

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

B. Ottinger shall timely renew her real estate license, timely pay all fees required for license renewal and shall comply with all other requirements necessary to maintain her license in a current and active status. During the disciplinary period, Ottinger shall not place her 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, Ottinger may surrender her real estate license by submitting a letter to the MREC and complying with 20 CSR 2250-8.155. If Ottinger applies for a real estate license after surrender, Ottinger 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. Ottinger 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. Ottinger 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, Ottinger 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. Ottinger 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 Ottinger's license as a real estate broker associate under § 339.100.2, RSMo, as amended, that accrues during the disciplinary period shall also constitute a violation of this Settlement Agreement.

G. Ottinger shall report to the MREC each occurrence of Ottinger being finally adjudicated and found guilty, or entering a plea of guilty or nolo contendere, in a state or federal criminal prosecution, to felony or misdemeanor offenses, within ten business days of each such occurrence.

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

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

21. 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.

22. This Settlement Agreement does not bind the MREC or restrict the remedies available to it concerning any future violations by Ottinger of

Chapter 339, RSMo, as amended, or the regulations promulgated thereunder, or of the terms and conditions of this Settlement Agreement.

23. 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.

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

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

26. 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.

27. 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.

28. Ottinger, 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.

29. Ottinger 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 Ottinger's license. If Ottinger desires the Administrative Hearing Commission to review this Settlement Agreement, Ottinger 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.

30. If Ottinger 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 Ottinger'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 Ottinger as allowed by law. If Ottinger 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

Renee Ottinger 12-4-15
Renee L. Ottinger Date

MISSOURI REAL ESTATE
COMMISSION

Joseph Denkler
Joseph Denkler, Executive Director
Date: 12/15/15

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