

Based upon the foregoing, the MREC hereby states:

- 1) The MREC is an agency of the State of Missouri created and existing pursuant to § 339.120, RSMo Cum. Supp. 2010, for the purpose of executing and enforcing the provisions of § 339.010 to 339.205 and § 339.710 to 339.860, RSMo Cum. Supp. 2010, and the regulations promulgated thereunder, relating to real estate salespersons and brokers.
- 2) Pursuant to the provisions of § 324.038, RSMo Cum. Supp. 2010, the MREC hereby issues a probated real estate salesperson license to Westbay. Such license is issued subject to the terms and conditions set forth below.
- 3) On or about June 24, 2011, the MREC received Westbay's application for a real estate salesperson license ("Application").
- 4) On his Application, question 5-13, Westbay was asked if he had "been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution in this state, or any other state, or of the United States, whether or not sentence was imposed? **NOTE: This includes Suspended Imposition of Sentence, Suspended Execution of Sentence, and alcohol related offenses, i.e. DWI and BAC.**" Westbay responded, "YES" to question 5-13.
- 5) On or about October 14, 2001, in Case No. 01CR169281F, Westbay pled guilty in the Circuit Court of Boone County, Missouri, to the crimes of Forgery, a class C felony, Distribution of a Controlled Substance, a class B felony, Stealing, a class C felony, and Violations Involving Health Care Payments, a class D felony.
- 6) On or about July 15, 2002, in Case No. 01CR169281F, the Court sentenced Westbay to ten years confinement in the Missouri Department of Corrections

for the Distribution of a Controlled Substance offense; seven years confinement in the Missouri Department of Corrections for the Forgery offense; seven years confinement in the Missouri Department of Corrections for the Stealing offense; and five years confinement in the Missouri Department of Corrections for the Violation of Health Care Payments. The sentences were to be served consecutively. The Court suspended the execution of the sentences and placed Westbay on five years probation under the supervision of the Missouri State Board of Probation and Parole.

7) On or about January 23, 2006, Westbay was released from his supervision.

8) On or about September 3, 2003, Westbay's Pharmacist's license was revoked by the Missouri Board of Pharmacy.

9) On or about October 2, 2009, Westbay was issued a five-year probated Pharmacist's license by the Missouri Board of Pharmacy.

10) A condition of Westbay's probated license with the Missouri Board of Pharmacy is that he undergo random drug testing.

11) The crimes of Forgery, Distribution of a Controlled Substance, Stealing, and Violations Involving Health Care Payments are offenses of which an essential element is fraud, dishonesty or an act of violence and/or this crime involving moral turpitude; and the commission of these crimes demonstrates a lack of regard for the health, safety, and welfare of the public.

12) The crimes of Forgery, Distribution of a Controlled Substance, Stealing, and Violations Involving Health Care Payments are offenses reasonably related to the qualifications, functions, and duties of a real estate salesperson.

II

CONCLUSION OF LAW

13) As a result of the criminal conduct identified in Section I herein, cause exists for the MREC to deny Westbay's application for a real estate salesperson license pursuant to § 339.080.1, RSMo 2000, which provides: "The commission may refuse to examine or issue a license to any person known by it to be guilty of any of the acts or practices specified in subsection 2 of section 339.100,"

14) As a result of the criminal conduct identified in Section I herein, cause exists for the MREC to deny Westbay's application for a real estate salesperson license pursuant to the provisions of § 339.100.2(16), (18), and (19), RSMo Cum. Supp. 2010, 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 his individual or entity license for any one or any combination of the following acts:

. . . .

(16) Committing any act which would otherwise be grounds for the commission to refuse to issue a license under section 339.040;

. . . .

(18) Been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of this state or any other state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this chapter, for any offense an

essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;

(19) Any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence;

15) Section 339.040.1 RSMo Cum. Supp. 2010, provides that licenses shall be issued only to persons of good moral character who bear a good reputation for honesty, integrity, and fair dealing and who are competent to transact the business of a real estate salesperson in a manner so as to safeguard the public's interest.

16) As a result of the criminal conduct identified in Section I herein, Westbay has engaged in conduct and has pleaded guilty to crimes that adversely affect his moral character, his reputation, and his fitness and qualifications to practice as a real estate salesperson.

17) As an alternative to refusing to issue a license, the MREC may, at its discretion, issue a license subject to probation, pursuant to § 324.038.1, RSMo Cum. Supp. 2010, which provides:

Whenever a board within or assigned to the division of professional registration, including the division itself when so empowered, may refuse to issue a license for reasons which also serve as a basis for filing a complaint with the administrative hearing commission seeking disciplinary action against a holder of license, the board, as an alternative to refusing to issue a license, may at its discretion, issue to an applicant a license subject to probation.

18) The MREC issues this Order in lieu of denial of Westbay's application for a real estate salesperson license. The MREC has determined that this Order is necessary to ensure the protection of the public.

III

TERMS AND CONDITIONS

Based on the foregoing, the Missouri real estate salesperson license issued to Westbay is subject to the following terms and conditions.

A. Westbay's license is on probation for five years. Westbay's real estate salesperson license is hereby placed on FIVE YEARS PROBATION from the effective date of this Order. During the period of probation on his real estate salesperson license, Westbay shall be entitled to practice as a real estate salesperson provided he adheres to all the terms stated herein. The period of probation shall constitute the "disciplinary period."

B. Terms and conditions of the disciplinary period. Terms and conditions of the disciplinary period are as follows:

(1) Westbay's license shall remain affiliated with Liberty Partners Real Estate LLC. Should Westbay terminate his affiliation with Liberty Partners Real Estate LLC, Westbay shall be prohibited from affiliating with any other licensee without prior approval from the Commission.

(2) Westbay shall keep the MREC apprised at all times in writing of his current address and telephone number at each place of

residence and business. Westbay shall notify the MREC in writing within ten days of any change in this information.

(3) Westbay shall timely renew his real estate license, timely pay all fees required for license renewal, and shall comply with all other requirements to maintain his license in a current and active status. During the disciplinary period, Westbay shall not place his real estate license on inactive status as would otherwise be allowed under 20 CSR 2250-4.050. Alternatively, without violating the terms and conditions of this Probated License Order, Westbay may surrender his real estate license. If Westbay applies for a real estate license after surrender, Westbay 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 Probated License Order.

(4) Westbay shall meet in person with the MREC or its representative at any such time and 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.

(5) Westbay shall immediately submit documents showing compliance with the requirements of this Order to the MREC when requested by the MREC or its designee.

(6) During the probationary period, Westbay shall accept and comply with unannounced visits from the MREC's representatives to monitor compliance with the terms and conditions of this Order.

(7) Westbay shall obey and comply with all terms and conditions of the Probated License Order issued by the Missouri Board of Pharmacy. Westbay shall prepare and submit quarterly written reports to the MREC regarding the status of and compliance with his criminal probation, parole, and/or release, as well as his compliance of the terms and conditions of this probated license order. Westbay is responsible for ensuring that such quarterly reports are received by the MREC on or before January 10, April 10, July 10, and October 10 during each year of the disciplinary period. Westbay shall submit the first such report so that the MREC receives it on or before January 10, 2012.

(8) Westbay shall also notify the MREC in the quarterly report how many random drug screenings he underwent for the Probated License Order issued by the Missouri Board of Pharmacy for that quarter. Westbay is to provide the MREC with a copy of the drug screening results.

(9) Westbay shall comply with all relevant provisions of Chapter 339, RSMo, as amended; all rules and regulations of the MREC; and all local, state, and federal laws. "State" as used herein refers to the State of Missouri and all other states and territories of the United States.

C. Upon the expiration and successful completion of the disciplinary period, Westbay's real estate salesperson license shall be fully restored if all other requirements of the law have been satisfied; provided, however, that in the event the MREC determines that Westbay has violated any term or condition of this Order, 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 Westbay's real estate salesperson license.

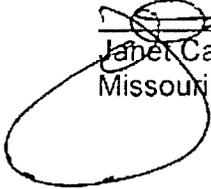
D. No order shall be entered by the MREC pursuant to the preceding paragraph of this Order without notice and an opportunity for hearing before the MREC in accordance with the provisions of Chapter 536, RSMo:

E. If the MREC determines that Westbay has violated a term or condition of this Order, which violation would also be actionable in a proceeding before the Administrative Hearing Commission or the circuit court, the MREC may elect to pursue any lawful remedies or procedures afforded it and is not bound by this Order in its determination of appropriate legal actions concerning such violation.

F. If any alleged violation of this Order occurs during the disciplinary period, 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. The MREC has continuing jurisdiction to hold a hearing to determine if a violation of this Order has occurred.

G. The MREC will maintain this Order as an open and public record of the MREC as provided in Chapters 339, 610, and 324, RSMo (as amended).

SO ORDERED AND EFFECTIVE THIS 18TH DAY OF OCTOBER 2011.



Janet Carder, Executive Director
Missouri Real Estate Commission