

**SETTLEMENT AGREEMENT**  
**BETWEEN**  
**MISSOURI REAL ESTATE APPRAISERS COMMISSION**  
**AND**  
**DOUGLAS MCGOWAN**

0000072 JUN -4 2009

Douglas McGowan (McGowan) and the Missouri Real Estate Appraisers Commission (MREAC) enter into this Settlement Agreement for the purpose of resolving the question of whether McGowan's license as a state-licensed real estate appraiser, no. 2004011115, will be subject to discipline. Pursuant to § 536.060, RSMo 2000,<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 MREAC under § 621.110, RSMo Cum. Supp. 2009. The MREAC and McGowan jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo Cum. Supp. 2009.

McGowan 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 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

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

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 MREAC at which time McGowan 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 MREAC.

Being aware of these rights provided to him by law, McGowan 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.

McGowan acknowledges that he has received a copy of documents that were the basis upon which the MREAC determined there was cause for discipline, along with citations to law and/or regulations the MREAC believes were violated. McGowan stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the MREAC that McGowan's license as a state-licensed real estate appraiser, license no. 2004011115, is subject to disciplinary action by the MREAC in accordance with the relevant provisions of Chapter 621, RSMo Cum. Supp. 2009, and §§ 339.500 through 339.549, RSMo, as amended.

The parties stipulate and agree that the disciplinary order agreed to by the MREAC and McGowan in Part II herein is based only on the agreement set out in Part I herein. McGowan understands that the MREAC 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 MREAC or may be discovered.

**I.**  
**Joint Stipulation of Facts and Conclusions of Law**

Based upon the foregoing, the MREAC and McGowan herein jointly stipulate to the following:

1. The MREAC was established pursuant to § 339.507, RSMo Cum. Supp. 2009, for the purpose of executing and enforcing the provisions of §§ 339.500 through 339.549, RSMo, as amended, the Missouri Certified and Licensed Real Estate Appraisers Act.
2. McGowan holds a current and active license from the MREAC as a state-licensed real estate appraiser, license no. 200411115.
3. On September 16, 2005, McGowan supervised the preparation of an appraisal report for 718 A & B Meadow Lane, Peculiar, MO (Meadow Lane Appraisal).
4. The Meadow Lane Appraisal Report valued the property at \$230,000.
5. Section 339.535, RSMo, states:  
  
State certified real estate appraisers and state licensed real estate appraisers shall comply with the Uniform Standards of Professional Appraisal Practice promulgated by the appraisal standards board of the appraisal foundation.
6. The preparation of the Meadow Lane Appraisal Report was to be prepared in compliance with the Uniform Standards of Professional Appraisal Practice, 2005 edition. The cited provisions of USPAP, 2005 edition are attached hereto as Exhibit A.

7. Based on the following errors and omissions in the preparation of the Meadow Lane Appraisal Report, McGowan is in violation of § 339.535, RSMo, the USPAP Ethics Rule regarding conduct, the USPAP Scope of Work Rule, USPAP Standards 1 and 2, and USPAP Standards Rules 1-1(a), (b), and (c), 1-4(a), (b) and (c), 1-6(a), 2-1(a) and (b), and 2-2(b)(iii) and (ix) 2005 edition:

- a. In the Sales Comparison Approach, McGowan failed to adjust Comparable Sale No. 3 for location, failed to support bedroom and basement adjustments the latter of which appear to be low.
- b. McGowan's failure to properly include support for the site value in the Cost Approach. for the adjustments made and omitting some adjustments, resulted in the appraisal lacking credibility.
- c. In the Cost Approach, McGowan added for a slab foundation when it should have been a subtraction.
- d. McGowan failed to reconcile the Cost Approach; and failed to discuss the suitability of the approaches attempted.
- e. McGowan failed to explain in the report whether the income information listed was subsidized and this failure leads to income that does not reflect market value.

f. McGowan failed to explain the income data, its relation to the market rent, the possibility of the comparable rentals having inbred data, resulting in an amount that does not represent the market.

g. McGowan failed to explain and provide support on why the gross rent multiplier used in the income approach was appropriate.

h. McGowan incorrectly executed the Cost and Sales Comparison approaches resulting in a misleading report.

8. Based on the facts and violations set forth above, cause exists to discipline McGowan's license as a state-licensed real estate appraiser pursuant to § 339.532.2(5), (6), (7), (8), (9), (10), and (14), RSMo Cum. Supp. 2005, which states:

2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any state-certified real estate appraiser, state-licensed real estate appraiser, or any person who has failed to renew or has surrendered his or her certificate or license for any one or any combination of the following causes:

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(5) Incompetency, misconduct, gross negligence, dishonesty, fraud, or misrepresentation in the performance of the functions or duties of any profession licensed or regulated by sections 339.500 to 339.549;

(6) Violation of any of the standards for the development or communication of real estate appraisals as provided in or pursuant to sections 339.500 to 339.549;

(7) Failure to comply with the Uniform Standards of Professional Appraisal Practice promulgated by the appraisal standards board of the appraisal foundation;

(8) Failure or refusal without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report, or communicating an appraisal;

(9) Negligence or incompetence in developing an appraisal, in preparing an appraisal report, or in communicating an appraisal;

(10) Violating, assisting or enabling any person to willfully disregard any of the provisions of sections 339.500 to 339.549 or the regulations of the commission for the administration and enforcement of the provisions of sections 339.500 to 339.549;

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(14) Violation of any professional trust or confidence.

## 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 MREAC in this matter under the authority of § 536.060, RSMo, and §§ 621.045.3 and 621.110, RSMo Cum. Supp. 2009.

1. **McGowan's license is on probation.** McGowan's license as a state licensed real estate appraiser is hereby placed on PROBATION for a period of TWO YEARS. The period of probation shall constitute the "disciplinary period." During the disciplinary period, McGowan shall be entitled to practice as a state licensed real estate appraiser under §§ 339.500 through 339.549, RSMo, as amended, provided McGowan adheres to all the terms of this agreement.

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

A. McGowan shall submit written reports to the MREAC by no later than April 1 and October 1, during each year of the disciplinary period stating truthfully whether there has been compliance with all terms and conditions of this Settlement Agreement. The first written report shall be submitted on or before October 1, 2010. The final written report shall be submitted to the MREAC 90 days prior to the end of the disciplinary period. Each written report shall be submitted no earlier than 30 days prior to the respective due date. McGowan is responsible for assuring that the reports are submitted to and received by the MREAC.

B. During the disciplinary period, McGowan shall maintain a log of all appraisal assignments as required by 20 CSR 2245-2.050. A true and accurate copy of the log shall be submitted to the MREAC by no later than April 1 and October 1 during each year of the disciplinary period. The first log shall be submitted on or before October 1, 2010. The last log shall be submitted to the MREAC 90 days prior to the end of the disciplinary period. Each log submitted shall be current to at least 30 days prior to the respective due date. McGowan is responsible for assuring that the logs are submitted to and received by the MREAC. Upon MREAC request, McGowan shall submit copies of his work samples for MREAC review.

C. During the disciplinary period, McGowan shall not serve as a supervising appraiser to trainee real estate appraisers under 20 CSR 2245-3.005. Within ten days of the effective date of this Settlement Agreement, McGowan shall advise each trainee real estate appraiser working under him that the supervisory relationship is terminated and comply with all other requirements of 20 CSR 2245-3.005 regarding the termination of the supervisory relationship.

D. During the disciplinary period, McGowan shall keep the MREAC apprised at all times in writing of his current work and home addresses and telephone numbers at each place of residence and employment. McGowan shall notify the MREAC in writing of any change in address or telephone number within 15 days of a change in this information.

E. McGowan shall timely renew his license and timely pay all fees required for license renewal and comply with all other MREAC requirements necessary to maintain his license in a current and active state.

F. During the disciplinary period, McGowan shall comply with all provisions of §§ 339.500 through 339.549, RSMo, all rules and regulations promulgated thereunder, and all federal and state laws. "State" includes the state of Missouri and all other states and territories of the United States. Any cause to discipline McGowan's license as a real estate appraiser under § 339.532.2, RSMo, as

amended, that accrues during the disciplinary period shall also constitute a violation of this Settlement Agreement.

G. McGowan shall accept and comply with reasonable unannounced visits from the MREAC's duly authorized agents to monitor compliance with the terms and conditions stated herein.

H. McGowan shall appear before the MREAC or its representative for a personal interview upon the MREAC's written request.

I. If, at any time within the disciplinary period, McGowan removes himself from the state of Missouri, ceases to be currently licensed under the provisions of §§ 339.500 through 339.549, RSMo, or fails to keep the MREAC advised of all current places of residence and business, the time of absence, unlicensed status or unknown whereabouts shall not be deemed or taken as any part of the disciplinary period.

3. Upon the expiration of the disciplinary period, the license of McGowan shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the MREAC determines that McGowan has violated any term or condition of this Settlement Agreement, the MREAC may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke or otherwise lawfully discipline McGowan's license.

4. No additional discipline shall be imposed by the MREAC pursuant to the preceding paragraph of this Settlement Agreement without notice and opportunity for hearing before the MREAC as a contested case in accordance with the provisions of Chapter 536, RSMo.

5. This Settlement Agreement does not bind the MREAC or restrict the remedies available to it concerning any future violations by McGowan of §§ 339.500 through 339.549, RSMo, as amended, or the regulations promulgated thereunder, or of the terms and conditions of this Settlement Agreement.

6. This Settlement Agreement does not bind the MREAC 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 MREAC or may be discovered.

7. If any alleged violation of this Settlement Agreement occurred during the disciplinary period, the parties agree that the MREAC 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. McGowan agrees and stipulates that the MREAC has continuing jurisdiction to hold a hearing to determine if a violation of this Settlement Agreement has occurred.

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

9. 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.

10. The parties to this Settlement Agreement understand that the MREAC will maintain this Settlement Agreement as an open record of the MREAC as required by Chapters 339, 610, and 324, RSMo, as amended.

11. McGowan, together with his partners, heirs, assigns, agents, employees, representatives and attorneys, does hereby waive, release, acquit and forever discharge the MREAC, 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.

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

13. If McGowan 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 McGowan's license. If McGowan does not request review by the Administrative Hearing Commission, the Settlement Agreement goes into effect 15 days after the document is signed by the Executive Director of the MREAC.

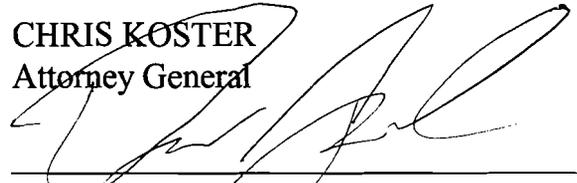
LICENSEE

MISSOURI REAL ESTATE  
APPRAISERS COMMISSION

Douglas McGowan      5-25-10  
Douglas McGowan      Date

Vanessa Beauchamp  
Vanessa Beauchamp, Executive Director  
Date: 6-8-10

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