

SETTLEMENT AGREEMENT
BETWEEN
MISSOURI REAL ESTATE APPRAISERS COMMISSION
AND
TIMOTHY R. TOAL

Timothy R. Toal (Toal) and the Missouri Real Estate Appraisers Commission (MREAC) enter into this Settlement Agreement for the purpose of resolving the question of whether Toal's certification as a state-certified residential real estate appraiser, no. 2004003252, 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 MREAC under § 621.110, RSMo. The MREAC and Toal jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo, Cum. Supp. 2006.

Toal 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

¹ 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 Toal 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, Toal 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.

Toal acknowledges that he has received a copy of the complaint filed with the MREAC, the appraisal reports, and other documents relied upon by the MREAC in determining there was cause for discipline, along with citations to law and/or regulations the MREAC believes were violated. Toal stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the MREAC that Toal's certification as a state-certified residential real estate appraiser, certificate no. 2004003252, is subject to disciplinary action by the MREAC in accordance with the relevant provisions of Chapter 621, RSMo Cum. Supp. 2006, and §§ 339.500 through 339.549, RSMo, as amended.

The parties stipulate and agree that the disciplinary order agreed to by the MREAC and Toal in Part II herein is based only on the agreement set out in Part I herein.

Toal 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 Toal herein jointly stipulate to the following:

Appraisal for 9493 Yorktown Drive, St. Louis, Missouri

1. On April 24, 2006, Toal prepared a Summary Appraisal report for 9493 Yorktown Drive, St Cyr Hills Plat 2 Lot 73, St. Louis, MO 63137 (the "Yorktown Drive Appraisal Report").

2. Pursuant to § 339.535, RSMo, the preparation of the Yorktown Drive Appraisal Report was required to be prepared in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP), 2005 edition. The cited provisions of USPAP, 2005 edition, are attached hereto as Exhibit A.

3. Based on the following errors and omissions in the preparation of the Yorktown Drive Appraisal Report, Toal is in violation of § 339.535, RSMo, USPAP Standards 1 and 2, and USPAP Standards Rules 1-1(a), (b) and (c), 1-3(a), 1-4(a), 1-4(b)(i) and (ii), 1-5(a), 1-6(a), 2-1(a) and (b), and 2-2(b)(ix), 2005 edition:

- a. Toal failed to report sales concession on the subject, which consisted of “seller to pay 6% towards buyers prepaids, points, and closing costs at closing.”
- b. Toal failed to disclose “Seller to Take Back Note and Deed of Trust” in the amount of \$24,000.00 as a second deed of trust. Instead, Toal indicated it was a conventional sales contract.
- c. Toal failed to accurately and completely identify and analyze the zoning classifications using the specific classifications of the City of Bellefontaine Neighbors. Bellefontaine Neighbors has three separate zoning classifications for single family dwellings: R-1, R-2 and R-3.
- d. Predominant value of one-unit housing in the neighborhood of the Yorktown Drive property was below the range of sales prices stated, thus either the predominant value or range is incorrect.
- e. The Yorktown Drive Appraisal Report is internally inconsistent in that Toal states that the overall condition of the subject property is good on the first page of the appraisal report, but states that the functional utility and condition are average in the Sales Comparison Approach.
- f. In the Cost Approach, Toal stated a site value of \$31,000, but failed to develop and support the estimated site value using an appropriate appraisal method or technique.

- g. In the Cost Approach, Toal failed to analyze the value of site improvements.**
- h. In the Sales Comparison Approach, Toal failed to properly reconcile the quality and quantity of data available, and explain his estimate of value. He states that he placed the most weight on comparable sale no. 3, because it “required the least adjustment,” but this is inaccurate. Even though Toal made fewer adjustments to comparable sale no. 3, it was less similar to the subject than the other comparable sales.**
- i. In the Sales Comparison Approach, a positive \$17,400 adjustment was made to comparable sale no. 1 for the significant difference in gross living area square footage, which raises questions regarding whether comparable sale no. 1 was sufficiently similar to the subject property for comparison.**
- j. In the Sales Comparison Approach, Toal failed to adjust for the quality of construction.**
- k. In the Sales Comparison Approach, Toal failed to adjust for lot size, while each comparable sale was substantially larger than the subject. Additionally, Toal misstated the site size of comparable sale no. 1 as 12,712 sq.ft when it was a 2.920 acre lot.**

l. In the Sales Comparison Approach, Toal did not describe, analyze, or adjust for the \$2,000 sales concession, or the river view for comparable sale no. 2.

m. In the Sales Comparison approach, Toal did not make adjustments for the larger garages of comparable sales nos. 2 and 3.

n. Based on Toal's errors and omissions in the Yorktown Drive Appraisal Report as described above, the appraisal lacks credibility.

Appraisal for 563 Apex Drive, St. Louis, Missouri

4. On or about January 26, 2006, Toal supervised the preparation of a Summary Appraisal Report for 563 Apex Drive, Oak Creek Plat 3 Lot 11, St. Louis, MO 63126 (the "Apex Drive Appraisal Report").

5. Pursuant to § 339.535, RSMo, the preparation of the Apex Drive Appraisal Report was required to be prepared in compliance with USPAP, 2005 edition. The cited provisions of USPAP, 2005 edition, are attached hereto as Exhibit A.

6. Based on the following errors and omissions in the preparation of the Apex Drive Appraisal Report, Toal is in violation of § 339.535, RSMo, USPAP Standards 1 and 2, and USPAP Standards Rules 1-1(a), (b) and (c), 1-3(a), 1-4(a), 1-4(b)(i), (ii) and (iii), 1-6(a), 2-1(a) and (b), and 2-2(b)(vii) and (ix), 2005 edition:

a. Toal failed to accurately and completely identify and analyze the zoning classifications using the specific classifications of the City of

Crestwood. Crestwood has five separate zoning classifications for single family residential: R-1 through R-5.

b. The Apex Drive Appraisal Report is internally inconsistent in that Toal states that the overall condition of the subject property is good on the first page of the appraisal report, but states that the functional utility and condition are average in the Sales Comparison Approach.

c. In the Cost Approach, Toal stated a site value of \$41,000, but failed to develop and support the estimated site value using an appropriate appraisal method or technique.

d. In the Cost Approach, Toal failed to analyze the value of site improvements and provided no support for the depreciation applied in the estimation.

e. In the Sales Comparison Approach, Toal failed to reconcile the quality and quantity of data available by using the highest sale price of the comparable sales without providing an adequate explanation other than that it required the least adjustment.

f. In the Sales Comparison Approach, Toal reported the quality of construction to comparable sale no. 1 as Brick/Veneer/Vinyl, when the record showed it was predominantly Brick/Stone, and the number of bathrooms for comparable sales nos. 2 and 3 did not match the source records.

g. In the Sales Comparison Approach, Toal failed to make adjustments for the quality of construction to each comparable sale.

h. There was no statement as to what assistance was given in the Apex Drive Appraisal Report, and, based on the errors and omissions described above, Toal inadequately supervised Patricia Toal.

i. Based on Toal's errors and omissions in the Apex Drive Appraisal Report as described above, the appraisal lacks credibility.

Appraisal for 3976 Gravois Road, House Springs, Missouri

7. On or about January 5, 2006, Toal supervised the preparation of a Summary Appraisal Report for 3976 Gravois Road, House Springs, MO 63051 (the "Gravois Road Appraisal Report").

8. Pursuant to § 339.535, RSMo, the preparation of the Gravois Road Appraisal Report was required to be prepared in compliance with USPAP, 2005 edition. The cited provisions of USPAP, 2005 edition, are attached hereto as Exhibit A.

9. Based on the following errors and omissions in the preparation of the Gravois Road Appraisal Report, Toal is in violation of § 339.535, RSMo, USPAP Standards 1 and 2, and USPAP Standards Rules 1-1(a), (b) and (c), 1-3(a), 1-4(a), 1-4(b)(i) and (ii), 2-1(a) and (b), and 2-2(b)(vii) and (ix), 2005 edition:

a. Toal failed to accurately and completely identify and analyze the zoning classifications using the specific classifications of Jefferson County. Jefferson County has several residential zoning classifications.

- b. The Gravois Road Appraisal Report is internally inconsistent in that Toal states that the overall condition of the subject property is good on the first page of the appraisal report, but states that the functional utility and condition are average in the Sales Comparison Approach.
- c. Toal failed to provide site dimensions for the subject.
- d. Toal erroneously reported the quality of construction for the subject as brick, when the record showed it was masonry. Further, Toal incorrectly measured gross living area of the subject as 1,540 sq.ft., when the record described total building area of the subject as 1,428 sq.ft.
- e. In the Cost Approach, Toal stated a site value of \$39,000 but failed to develop and support the estimated site value using an appropriate appraisal method or technique. Further, Toal failed to analyze the value of the site improvements.
- f. In the Sales Comparison Approach, Toal erroneously made a positive \$2,500 adjustment to comparable sale no. 1 for two car garages, when it should have made a negative adjustment.
- g. In the Sales Comparison Approach, Toal omitted the fact that comparable sale no. 3 had one carport in addition to two garages, thus the adjustment is not credible.
- h. In the Sales Comparison Approach, Toal failed to make adjustments for the heating/cooling systems to comparable sale no. 2, and for the quality

of construction to each comparable sale. Further, site adjustments have not been made to any of the three comparable sales, despite their differences in size.

i. There was no statement as to what assistance was given in the Gravois Road Appraisal Report, and, based on the errors and omissions described above, Toal inadequately supervised Patricia Toal.

j. Based on Toal's errors and omissions in the Gravois Road Appraisal Report as described above, the appraisal lacks credibility.

Conclusions of Law

10. Section 339.535, RSMo, provides:

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.

11. Based on Toal's errors and omissions in the preparation of the Yorktown Drive Appraisal Report, the Apex Drive Appraisal Report, and the Gravois Road Appraisal Report, cause exists to discipline Toal's certification as a state-certified residential real estate appraiser pursuant to § 339.532.2(5), (6), (7), (8), (9), (10) and (14), RSMo, 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 certificate of license for any one or any combination of the following causes:

.....

(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;

.....

(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, 621.045.3, and 621.110, RSMo.

12. **Toal's license is suspended, followed by a period of probation.** Toal's license as a state-certified residential real estate appraiser is hereby SUSPENDED for a period of six months or until he completes the courses set out in paragraphs 13 C and 13 D below whichever first occurs, for a period of THREE YEARS. The periods of suspension and probation shall constitute the "disciplinary period." During the period of suspension, Toal shall not be entitled to practice as a real estate appraiser pursuant to §§ 339.500 to 339.549, RSMo. During the period of probation, Toal shall be entitled to practice as a state-certified residential real estate appraiser under Chapter 339, RSMo, provided Toal adheres to all the terms of this Settlement Agreement.

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

A. Toal shall submit written reports to the MREAC by no later than March 1 and Sept 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 March 1, 2008. The final written report shall be submitted to the MREAC 60

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. Toal is responsible for assuring that the reports are submitted to and received by the MREAC.

B. During the disciplinary period, Toal 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 ~~March 1~~ and ~~Sept 1~~ during each year of the disciplinary period. The first log shall be submitted on or before ~~March 1~~, 2008. The last log shall be submitted to the MREAC 60 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. Toal is responsible for assuring that the logs are submitted to and received by the MREAC. Upon MREAC request, Toal shall submit copies of his work samples for MREAC review.

C. Within six months after the effective date of this Settlement Agreement, Toal shall submit verification to the MREAC of successful completion of the fifteen-hour approved National USPAP course, including examination. This course will not replace the 7-hour National USPAP course required by the general continuing education requirements.

D. Within six months after the effective date of this Settlement Agreement, Toal shall submit verification to the MREAC of successful

completion of a thirty (30)-hour approved course, including examination, on **Comparative Sales Analysis.**

E. Toal may not apply the education required by this Settlement Agreement to satisfy the continuing education hours required for certification renewal. Upon receiving verification from Toal of completion of the USPAP and **Comparative Sales Analysis** courses, the MREAC shall terminate the suspension, and the probationary period shall commence.

F. During the period of suspension, Toal shall not sign appraisal reports in any capacity. During the period of probation, Toal shall not sign appraisal reports as a supervising appraiser.

G. During the disciplinary period, Toal 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. Toal shall notify the MREAC in writing of any change in address or telephone number within 15 days of a change in this information.

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

I. During the disciplinary period, Toal 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 Toal's certification 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.

J. Toal 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.

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

L. If, at any time within the disciplinary period, Toal removes himself from the state of Missouri, ceases to be currently certified 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, uncertified status or unknown whereabouts shall not be deemed or taken as any part of the disciplinary period.

14. Upon the expiration of the disciplinary period, the certification of Toal shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the MREAC determines that Toal 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 Toal's certification.

15. 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.

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

17. 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.

18. 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. Toal agrees and stipulates that the MREAC has continuing jurisdiction to hold a hearing to determine if a violation of this Settlement Agreement has occurred.

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

20. 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.

21. 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 620, RSMo, as amended.

22. Toal, together with his partners, shareholders, officers, directors, 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.

23. Toal 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 Toal's certification. If Toal desires the Administrative Hearing Commission to review this Settlement Agreement, Toal 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 65101.

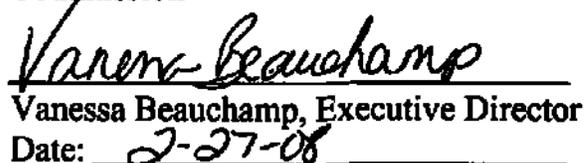
If Toal requests review, this Settlement Agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the Settlement Agreement sets forth cause for disciplining Toal's certification. If Toal does not request review by the Administrative Hearing Commission, 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



Timothy R. Toal Date



Vanessa Beauchamp, Executive Director
Date: 2-27-08

ALLAN LAW GROUP, LLC

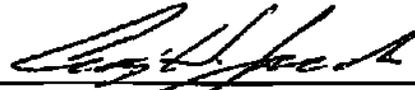


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