

SETTLEMENT AGREEMENT
BETWEEN
MISSOURI REAL ESTATE COMMISSION
AND
JAMES EARL CHAFFIN, II

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MREC

James Earl Chaffin, II (Chaffin) and the Missouri Real Estate Commission (MREC) enter into this Settlement Agreement for the purpose of resolving the question of whether Chaffin's license as a real estate salesperson, no 1999116731, 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 2011 The MREC and Chaffin jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621 045, RSMo Supp 2011

Chaffin 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

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

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 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 MREC at which time Chaffin 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 it by law Chaffin 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

Chaffin acknowledges that he 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 Chaffin stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the MREC that Chaffin's license as a real estate salesperson, license no 1999116731 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 Chaffin in Part II herein is based only on the agreement set out in Part I herein. Chaffin understands that the MREC 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 MREC or may be discovered

I
Joint Stipulation of Facts and Conclusions of Law

Based upon the foregoing, the MREC and Chaffin herein jointly stipulate to the following

- 1 The Missouri Real Estate Commission is an agency of the State of Missouri created and established pursuant to § 339.120 RSMo Supp. 2011 for the purpose of executing and enforcing provisions of §§ 339.010 through 339.205 and §§ 339.710 through 339.855 RSMo as amended
- 2 Chaffin is licensed by the MREC as a real estate salesperson, license no. 1999116731. At all relevant times herein, Chaffin's license was active and current.
- 3 Chaffin's real estate salesperson license is scheduled to expire on September 30, 2012.

4 At all times relevant herein Chaffin was associated with Chaffin Real Estate as a salesperson, as defined by § 339 010 2, RSMo Supp 2011, cited below

A real estate salesperson' is any person partnership, limited partnership limited liability company, association, professional corporation or corporation, domestic or foreign who for a compensation or valuable consideration becomes associated, either as an independent contractor or employee either directly or indirectly, with a real estate broker to do any of the things above mentioned

5 Cause exists to discipline Chaffin s real estate salesperson license pursuant to § 339 100 2, RSMo Supp 2011 which provides in pertinent part

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 combination of the following acts

* * *

(3) Failing within a reasonable time to account for or to remit any moneys valuable documents or other property, coming into his or her possession, which belongs to others,

* * *

(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

* * *

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

6 Chaffin managed properties belonging to Harris Land Development, LLC (“Harris Land Development”) during March 2011 and April 2011 without a signed management agreement in violation of 20 CSR 2250 8 200(1), and § 339 780 2 and 3, RSMo Supp 2011 thus providing cause to discipline the real estate license of Chaffin pursuant to § 339 100 2(3), (15), and (19) RSMo Supp 2011

7 Rule 20 CSR 2250 8 200(1) provides

(1) When managing property a licensee shall not rent or lease offer to rent or lease, negotiate or offer or agree to negotiate, the rent or lease, list or offer to list for lease or rent assist or direct in procuring of prospects calculated to result in the lease or rent, assist or direct in the negotiation of any transaction calculated or intended to result in the lease or rent, or show that property to prospective renters or lessees unless the licensee's broker holds a current written property management agreement or other written authorization signed by the owner of the real estate or the owner's authorized agent

8 Section 339 780 2 and 3 RSMo Supp 2011 provides in pertinent part

2 Before engaging in any of the activities enumerated in section 339 010, a designated broker intending to establish a limited agency relationship with a seller or landlord shall enter into a written agency agreement with the party to be represented The agreement shall include a licensee s duties and responsibilities specified in section 339 730 and the terms of compensation and shall specify whether an offer of subagency may be made to any other designated broker

3 Before or while engaging in any acts enumerated in section 339 010, except ministerial acts defined in section 339 710, a designated broker acting as a single agent for a buyer or tenant shall enter into a written agency agreement with the buyer or tenant The agreement shall include a licensee's duties and responsibilities specified in section 339 740 and the terms of compensation

9 Chaffin transferred and held funds of Harris Land Development without authorization or a signed management agreement from Harris Land Development in violation of § 339 780 2 and 3, RSMo Supp 2011, as cited above, and § 339 105 3 RSMo Supp 2011, thus providing cause to discipline the real estate license of Chaffin pursuant to § 339 100 2(15), RSMo Supp 2011

10 Section 339 105 3, RSMo Supp 2011 provides

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

11 Chaffin failed to timely remit funds belonging to Harris Land Development after the management agreement between the two parties was terminated in violation of § 339 790 2(1), RSMo Supp 2011, thus providing cause to discipline the real estate license of Chaffin pursuant to § 339 100 2(3), (15) and (19) RSMo Supp 2011

12 Section 339 790 2(1) RSMo Supp 2011, provides

2 A real estate broker and an affiliated licensee owe no further duty or obligation after termination expiration, completion or performance of the brokerage agreement, except the duties of

(1) Accounting in a timely manner for all money and property related to, and received during, the relationship[]

13 Chaffin failed to remit funds of Harris Land Development in the correct amount and from the correct escrow account in violation of § 339 790 2(1), RSMo Supp 2011 as cited above thus providing cause to discipline the real estate license of Chaffin pursuant to § 339 100 2(3), (15) and (19), RSMo Supp 2011

14 Chaffin failed to timely remit tenant information, leases, and keys belonging to Harris Land Development in violation of § 339 790 2(1), RSMo Supp 2011 as cited above, thus providing cause to discipline the real

estate license of Chaffin pursuant to § 339 100 2(3), (15), and (19), RSMo Supp 2011

15 Chaffin interfered with the HUD loan process between Harris Land Development and Love Funding by discouraging the HUD loan speaking negatively and unprofessionally about Harris Land Development, and disclosing confidential information about Harris Land Development to Love Funding representatives in violation of § 339 730, RSMo Supp 2011 thus providing cause to discipline the real estate license of Chaffin pursuant to § 339 100 2(15) and (19), RSMo Supp 2011

16 Section 339 730, RSMo Supp, 2011, provides in pertinent part

1 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

(2) To exercise reasonable skill and care for the client,

(3) To promote the interests of the client with the utmost good faith, loyalty and fidelity

* * *

2 A licensee acting as a seller's or landlord's agent shall not disclose any confidential information about the client unless disclosure is required by statute rule or regulation or failure to disclose the information would constitute a misrepresentation or unless disclosure is necessary to defend the affiliated licensee against an

action of wrongful conduct in an administrative or judicial proceeding or before a professional committee
No cause of action shall arise against a licensee acting as a seller's or landlord's agent for making any required or permitted disclosure[]

17 The conduct of Chaffin as alleged herein constitutes untrustworthy, improper, and/or fraudulent business dealings and/or demonstrates bad faith and/or gross incompetence, providing cause to discipline the real estate license of Chaffin pursuant to § 339 100 2(19), RSMo Supp 2011

18 Based on the conduct of Chaffin as alleged herein cause exists to discipline Chaffin's real estate salesperson license pursuant to § 339 100 2 (3), (15), and (19) RSMo Supp 2011 as cited above

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 3 and 621 110, RSMo Supp 2011

19 **Chaffin's license is on probation** Chaffin's license as a real estate salesperson is hereby placed on PROBATION for a period of TWO YEARS The period of probation shall constitute the "disciplinary period "

During the disciplinary period, Chaffin shall be entitled to practice as a real estate salesperson under Chapter 339, RSMo as amended, provided Chaffin adheres to all the terms of this agreement

20 **Terms and conditions of the disciplinary period** Terms and conditions of the probation are as follows

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

B Chaffin shall timely renew his real estate license(s), timely pay all fees required for license renewal and shall comply with all other requirements necessary to maintain his license(s) in a current and active status During the disciplinary period, Chaffin shall not place his real estate license(s) on inactive status as would otherwise be allowed under 20 CSR 2250 4 050 Alternatively without violating the terms and conditions of this Settlement Agreement, Chaffin may surrender his real estate license(s) by submitting a letter to the MREC and complying with 20 CSR 2250 8 155 If Chaffin applies for a real estate license after surrender, Chaffin 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 Chaffin 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 Chaffin 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 Chaffin 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 Chaffin 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

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

22 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

23 This Settlement Agreement does not bind the MREC or restrict the remedies available to it concerning any future violations by Chaffin of Chapter 339, RSMo, as amended, or the regulations promulgated thereunder, or of the terms and conditions of this Settlement Agreement

24 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

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

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

27 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

28 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 339, 610, and 324, RSMo, as amended

29 Chaffin, together with his 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.

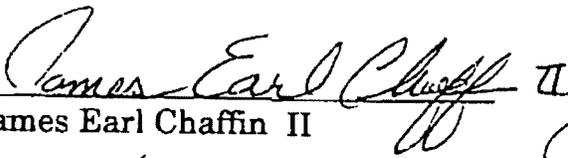
30 Chaffin understands that he may, either at the time the Settlement Agreement is signed by all parties, or within fifteen days thereafter, submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Chaffin's license. If Chaffin desires the Administrative Hearing Commission to review this Settlement Agreement, Chaffin may submit its request to Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65102.

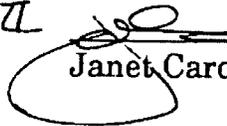
31 If Chaffin requests review, this Settlement Agreement shall become effective on the date the Administrative Hearing Commission issues

its order finding that the Settlement Agreement sets forth cause for disciplining Chaffin'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 Chaffin as allowed by law. If Chaffin 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

MISSOURI REAL ESTATE
COMMISSION


James Earl Chaffin II


Janet Carder, Executive Director

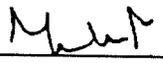
Date

9/28/2012

Date

10-9-12

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