

SETTLEMENT AGREEMENT BETWEEN
MISSOURI REAL ESTATE COMMISSION AND JOHN J. KREILICH

Come now John J. Kreilich ("Licensee") and the Missouri Real Estate Commission ("Commission") and enter into this settlement agreement for the purpose of resolving the question of whether Licensee's license as a real estate broker will be subject to discipline.

Pursuant to the terms of § 536.060, RSMo,¹ the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri ("AHC") regarding cause to discipline the Licensee's license, and, additionally, the right to a disciplinary hearing before the Commission under § 621.110, RSMo.

Licensee acknowledges that Licensee understands the various rights and privileges afforded Licensee by law, including the right to a hearing of the charges against Licensee; the right to appear and be represented by legal counsel; the right to have all charges against Licensee proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against Licensee; the right to present evidence on Licensee's own behalf at the hearing; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against Licensee and, subsequently, the right to a disciplinary hearing before the Commission at which time Licensee may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against Licensee's license. Being aware of these rights provided Licensee by operation of law, Licensee 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 Licensee.

Licensee acknowledges that Licensee has received a copy of the documents relied upon by the Commission in determining there was cause to discipline Licensee's license, along with citations to law and/or regulations the Commission believes were violated.

For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this settlement agreement are true and stipulates with the Commission that Licensee's license, numbered 2006029209 is subject to disciplinary action by the Commission in accordance with the provisions of Chapter 621 and §§ 339.010-339.205 and 339.710-339.855, RSMo.

¹ All statutory references are to Missouri Revised Statutes 2000, as amended, unless otherwise indicated.

Joint Stipulation of Fact and Conclusions of Law

1. The Commission is an agency of the state of Missouri created and established pursuant to § 339.120, RSMo, for the purpose of licensing all persons engaged in the practice as a real estate broker or salesperson in this state. The Commission has control and supervision of the licensed occupations and enforcement of the terms and provisions of Sections 339.010-339.205 and 339.710-339.855, RSMo.

2. Licensee, John J. Kreilich, holds an active broker associate license from the Commission, license number 2006029209. The Commission issued Licensee's license on August 1, 2006. Licensee's license expires June 30, 2018. Licensee's license was current and active at all times relevant herein.

3. The Commission received a formal complaint filed by Tonya Sue Yake against Licensee. At the time the complaint was filed, Licensee was a broker associate with Flyway Properties, LLC (Flyway). Yake listed her 173 acre family property in Patton, Missouri in August of 2013 with Flyway, intent on selling a portion of the acreage. Yake alleged that Licensee bullied her into listing more of her property than she wanted to list; that Licensee failed to act in her interest to protect her property, failed to adhere to the terms of their listing agreement, failed to disclose water damage that had been done to her property, and that Licensee treated her in an unprofessional manner.

4. During the Commission's investigation of the filed complaint against Licensee, forms used by Licensee were reviewed and were found to be non-standard forms with several irregularities.

5. On or about November 14, 2017, the Commission Auditor, Jeff Niemeyer, reviewed the listing agreement and the sales contract used by Licensee. A copy of the listing agreement from August 7, 2013, and the sales contract from October 4, 2013 were reviewed by Mr. Niemeyer. Mr. Niemeyer was asked to review the documents for items he would note in an audit.

6. Mr. Niemeyer, in his review, concluded that the contract appeared to be valid, but that it did have some problems that would result in audit violations:

- a. In violation of 20 CSR 2250-8.100 (1), the property was not properly identified in the contract, as there was an incomplete legal description.
- b. In violation of 20 CSR 2250-8.100 (3), changes to the contract were not initialed by the buyers and sellers.

- c. In violation of 20 CSR 2250-8.096, Licensee's disclosure as a dual agent did not comply with the regulation (Licensee did not sign and date the disclosure form, and there was no Broker Disclosure Form confirmation).
- d. In violation of 20 CSR 2250-8.090 (4) (A) 13, the property was not properly identified in the listing agreement.
- e. In violation of 20 CSR 2250-8.090 (4) (A) 1, there was not expiration date in the listing agreement.
- f. In violation of 20 CSR 2250-8.090 (4) (A) 7, there was no statement which prohibited or permitted Licensee from acting as a dual agent.
- g. In violation of 20 CSR 2250-8.090 (4) (A) 8, there was no statement which prohibited or permitted Licensee from acting as a transaction broker in the listing agreement.
- h. In violation of section 339.730, RSMo, and 20 CSR 2250-8.090 (4) (A) 14 and (C), changes to the terms of the listing agreement (a change in Licensee's obligation to personally show the listed property) were not reflected in writing and not subsequently initialed by the parties.

7. Section 339.730, RSMo, states in relevant 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[.]

8. Regulation 20 CSR 2250-8.090 states, in relevant part:

(4) Seller's/Lessor's Agency (Sale/Lease Listing) Agreement.

(A) Every written listing agreement or other written agreement for brokerage services shall contain all of the following:

1. The price;

7. A statement which permits or prohibits the designated broker and/or affiliated licensee from

acting as a disclosed dual agent and if permitted, the duties and responsibilities of a dual agent;

8. A statement which permits or prohibits the designated broker and/or affiliated licensee from acting as a transaction broker and if permitted, the duties and responsibilities of a transaction broker;

...

13. The legal description or the complete street address of the property, which includes the city where the property is located; or, in the absence of a legal description or address, a clear description which unmistakably identifies the property; and

14. All other terms and conditions under which the property is to be sold, leased, or exchanged.

...

(C) Any addendums, riders, endorsements, attachments, or changes to the listing agreement or other written agreement for brokerage services must contain the initials of all parties.

9. Regulation 20 CSR 2250-8.096 states, in relevant part:

(1) Licensees acting with or without a written agreement for brokerage services pursuant to sections 339.710 to 339.860, RSMo, are required to have such relationships confirmed in writing by each party to the real estate transaction on or before such party's first signature to the real estate contract. Nothing contained herein prohibits the written confirmation of brokerage relationships from being included or incorporated into the real estate contract, provided that any addendum or incorporated document containing the written confirmation must include a separate signature section for acknowledging the written confirmation that shall be signed and dated by each party to the real estate transaction.

(A) Written confirmation must—

1. Identify the licensee's brokerage relationship;

...

4. Confirm the seller's/landlord's and buyer's/tenant's receipt of the Broker Disclosure Form prescribed by the commission;

5. Be signed and dated by the seller/landlord and buyer/tenant. If the landlord has entered into a written property management agreement pursuant to 20 CSR2250-8.200 -20 CSR 2250-8.210, the landlord shall not be required to sign the written confirmation; and

6. Be signed and dated by the disclosing licensees on or before the contract date. If a landlord's agent or transaction broker is conducting property management pursuant to 20

CSR 2250-8.200–20 CSR 2250-8.210, the unlicensed office personnel may, in their performance of the duties enumerated in 339.010.5(5)(a)–(e), sign the written confirmation on behalf of the landlord's agent or transaction broker.

10. Regulation 20 CSR 2250-8.100 states, in relevant part:

(1) Every licensee shall make certain that all of the terms and conditions authorized by the principal in a transaction are specified and included in an offer to sell or buy and shall not offer the property on any other terms. Every written offer shall contain the legal description or property address, or both, and city where the property is located, or in the absence of, a clear description unmistakably identifying the property.

...

(3) Any change to a contract shall be initialed by all buyers and sellers. Acceptance of each fully executed contract shall include the date at which final agreement was reached either by 1) specific acknowledgement of final acceptance date; or 2) date of the last signature or initial to the contract.

11. Licensee's conduct, as described in paragraphs 3 and 6 above, constitutes cause to discipline Licensee's license pursuant to § 339.100.2(1), (15), (16) and (19), RSMo.

12. Cause exists for the Commission to take disciplinary action against Licensee's license under § 339.100.2(1), (15), (16) and (19), RSMo, which states 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 any combination of the following acts:

(1) Failure to maintain and deposit into 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;

...

(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 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[.]

Joint Agreed Disciplinary Order

13. The Commission has authority in this matter, under §§ 536.060, 621.045.4 and 621.110, RSMo., to discipline Licensee's license.

Joint Agreed Settlement

14. Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the resolution of this matter between Licensee and the Commission:

Surrender in Lieu of Discipline or Entry of a Disciplinary Order

15. Licensee agrees, in lieu of formal disciplinary action, to **VOLUNTARILY SURRENDER** to the Commission his license, number 2006029209, under the terms and conditions set forth herein. Within ten (10) days after Licensee's surrender of his license, Licensee shall return all indicia of Missouri licensure to the Commission. Licensee may surrender his license by submitting a Surrender of License Right form to the MREC indicating his surrender of licensure along with his original license and any duplicate copies issued to Licensee. If Licensee applies for a real estate license after surrender, Licensees shall be required to requalify as if an original applicant. Licensee would have to apply as an original applicant for a licensure. 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.

16. **IN THE ALTERNATIVE TO VOLUNTARY SURRENDER**, Licensee may, within six (6) months of the effective date of this Settlement Agreement, complete the 24 hour Missouri Real Estate Practice Course and provide proof of completion to the Commission's office.

17. This Agreement does not bind the Commission or restrict the remedies available to it concerning facts or conduct not specifically mentioned in this Agreement that are either now known to the Commission or may be discovered.

18. This Agreement does not bind the Commission or restrict the remedies available to it concerning any future violations by Licensee of Chapter 339, RSMo, as amended, or the regulations promulgated thereunder, or of the terms of this Agreement.

19. All parties agree to pay all their own fees and expenses incurred as a result of this case, its settlement or any litigation.

20. The parties to this Agreement understand that the Missouri Real Estate Commission will maintain this Agreement as an open record of the Commission as provided in Chapters 339, 610 and 324, RSMo.

21. The terms of this settlement agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise provided 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.

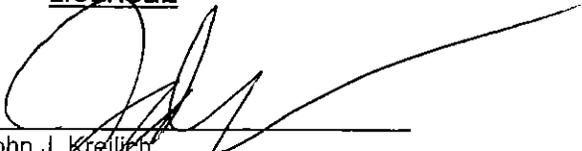
22. Licensee, together with Licensee's heirs and assigns, and Licensee's attorneys, do hereby waive, release, acquit and forever discharge the Commission, its respective members and any of its employees, agents, or attorneys, including any former Commission members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to § 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case, its settlement, or from the negotiation or execution of this settlement agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this settlement agreement in that it survives in perpetuity even in the event that any court of law deems this settlement agreement or any portion thereof to be void or unenforceable.

23. If no contested case has been filed against Licensee, Licensee has the right, either at the time the settlement agreement is signed by all parties or within fifteen days thereafter, to submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties to the settlement agreement constitute grounds for denying or disciplining the license of Licensee. If Licensee desires the Administrative Hearing Commission to review this Agreement, Licensee may submit this request to:
Administrative Hearing Commission, United States Post Office Building, 131 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65102-1557.

24. If Licensee has requested review, Licensee and Commission jointly request that the Administrative Hearing Commission determine whether the facts set forth herein are grounds for disciplining

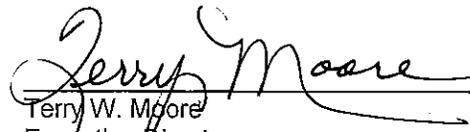
Licensee's license and issue findings of fact and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining Licensee's license. Effective the date the Administrative Hearing Commission determines that the agreement sets forth cause for disciplining Licensee's license, the agreed upon discipline set forth herein shall go into effect. If the Administrative Hearing Commission issues an order stating that the Settlement Agreement does not set forth cause for discipline, then the Commission may proceed to seek discipline against Licensee as allowed by law. If the Licensee does not submit the agreement to the Administrative Hearing Commission for determination, the agreement shall become effective fifteen (15) days following the signature of the Commission's Executive Director.

LICENSEE



John J. Krelich
Date 8/1/18

COMMISSION



Terry W. Moore
Executive Director
Missouri Real Estate Commission
Date 08-09-18