

**SETTLEMENT AGREEMENT**  
**BETWEEN**  
**MISSOURI REAL ESTATE COMMISSION**  
**AND**  
**MCBRIDE & SON BROKERAGE COMPANY**

McBride & Son Brokerage Company (McBride Brokerage) and the Missouri Real Estate Commission (MREC) enter into this Settlement Agreement for the purpose of resolving the question of whether McBride Brokerage's license as a real estate corporation no 2010011005 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 MREC under § 621 110, RSMo Supp 2011 The MREC and McBride Brokerage jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621 045 RSMo Supp 2011

McBride Brokerage acknowledges that it understands the various rights and privileges afforded it by law including the right to a hearing of the charges against it, 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

---

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

against it at the hearing the right to present evidence on its 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 it, 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 McBride Brokerage 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, McBride Brokerage 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 it

McBride Brokerage acknowledges that it 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 McBride Brokerage stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the MREC that McBride Brokerage's license as a real estate corporation license no 2010011005, 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 McBride Brokerage in Part II herein is based only on the agreement set out in Part I herein. McBride Brokerage understands that the MREC may take further disciplinary action against it 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 Davis herein jointly stipulate to the following:

1. The MREC is an agency of the state of Missouri created and existing pursuant to § 339.120 RSMo Supp. 2011 for the purpose of licensing real estate agents and brokers and of executing and enforcing the provisions of §§ 339.010 to 339.180 and 339.710 to 339.860 RSMo as amended.

2. McBride Brokerage maintains a real estate corporation license license number 2010011005. McBride Brokerage's license was current and active at all times relevant to this action.

3 McBride Brokerage was created on March 31 2010 Its registered agent is Jeffrey M Berger, who may be served at the following address 16091 Swingley Ridge Rd, Suite 300 Chesterfield MO 63017

4 Pursuant to § 339 010 1, RSMo McBride Brokerage is a ‘real estate broker ’

5 McBride Brokerage retained Kuehl as a ‘salesperson on or around April 18, 2010 Kuehl did not have a valid salesperson license at that time

6 Rule 20 CSR 2250 4 050(1) and (4), regarding the transfer of a salespersons license from one broker to another states in part

(1) A broker whose license is in good standing and who elects to operate under the supervision of a licensed broker shall first comply with the provisions of 20 CSR 2250 8 155 The broker shall surrender his/her license to the commission for conversion to a broker salesperson license A broker salesperson license will be issued upon receipt of the properly completed application accompanied by the required fee No individual holding a broker salesperson license may have a salesperson licensed under him/her A broker license may be reinstated upon proper application to the commission accompanied by the required fee

\*\*\*

(4) An original licensee or a licensee changing license status/type shall not be deemed to be entitled to engage in any activity for which a license is required until the new license is received by the broker or

until a written notification is received from the commission that the application is being processed. When a broker salesperson or salesperson transfers from one broker to another without changing license type the licensee shall be deemed transferred at the time the properly completed application is mailed by certified, registered or overnight delivery, if all materials are required to transfer are mailed under one (1) cover. The new broker is responsible for seeing that the application is complete and that the application for transfer is mailed by certified registered, or overnight delivery to ensure proof of delivery.

7 McBride Brokerage violated 20 CSR 2250 8 050(1) and (4) by failing to assure that Kuehl's application was complete and properly mailed to the MREC and allowing Kuehl to engage in the unlicensed practice of real estate including showing the properties giving out property information to potential and actual buyers, directly contacting potential and actual buyers exchanging contract documents between buyers and sellers coordinating the closing of properties under contract, advertising herself as a salesperson in a Mayer Homes advertisement and signing contracts on behalf of McBride Brokerage, and by giving Kuehl a commission on her sale of McBride Brokerage properties.

8 Rule 20 CSR 2250 8 050 regarding the activities of unlicensed clerical or office employees of a broker states in part

(1) The activities of unlicensed clerical or office employees of a broker shall be limited to the duties normally attributed to those positions. Unlicensed persons shall not do, or attempt to do, any of the activities set out under 339 010 1(1) (10), RSMo

9 Section 339 010 1 RSMo, states in part

A real estate broker" is any person partnership limited partnership limited partnership, limited liability company, association, professional corporation or corporation foreign or domestic who for another, and for a compensation or valuable consideration does or attempts to do, any or all of the following

(1) Sells, exchanges purchases rents or leases real estate

(2) Offers to sell exchange purchase, rent or lease real estate

(3) Negotiates or offers or agrees to negotiate the sale, exchange purchase rental or leasing of real estate

(4) Lists or offers or agrees to list real estate for sale lease rental or exchange

(5) Buys, sells offers to buy or sell or otherwise deals in options on real estate or improvements thereon,

\*\*\*

(7) Assists or directs in the procuring of prospects, calculated to result in the sale, exchange, leasing or rental of real estate

(8) Assists or directs in the negotiation of any transaction calculated or intended to result in the sale exchange leasing or rental of real estate

\*\*\*

(10) Performs any of the foregoing acts on behalf of the owner of real estate or interest therein or improvements affixed thereon for compensation

10 McBride Brokerage violated 20 CSR 2250 8 050 by allowing Kuehl to practice real estate as defined in § 339 010 1, RSMo

11 Based on McBride Brokerage s conduct cause exists to discipline McBride Brokerage s real estate corporation license under § 339 100 2(7)

(15) (19) and (23), RSMo Supp 2011 which states in part

2 The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621 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

\*\*\*

(7) Paying a commission or valuable consideration to any persons for acts or services performed in violation of sections 339 010 to 339 180 and sections 339 710 to 339 860\*

\*\*\*

(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<sup>+</sup> 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, demonstrates bad faith or incompetence misconduct or gross negligence

\*\*\*

(23) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated under sections 339 010 to 339 180 and sections 339 710 to 339 860\* who is not registered and currently eligible to practice under sections 339 010 to 339 180 and sections 339 710 to 339 860\*[]

## 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

12 McBride Brokerage agrees to pay a civil penalty of \$500 Said penalty is authorized under § 339 205 RSMo Supp 2011

13 McBride Brokerage agrees to pay the \$500 civil penalty by certified check made payable to the "Missouri Real Estate Commission State

of Missouri and mailed to Missouri Real Estate Commission P O Box 1339  
Jefferson City MO 65102 1339 McBride Brokerage shall postmark and  
mail or hand deliver said check within 60 days of the date when this  
Settlement Agreement becomes effective

14 Funds received pursuant to this agreement shall be handled in  
accordance with Section 7 of Article IX of the Missouri Constitution Section  
339 205 8 RSMo Supp 2011

15 In the event the MREC determines that McBride Brokerage has  
failed to pay any portion of the \$500 agreed upon herein or has violated any  
other term or condition of this Settlement Agreement the MREC may in its  
discretion (1) notify the Attorney General who "may commence an action to  
recover the amount of the penalty including reasonable attorney fees and  
costs and a surcharge of fifteen percent of the penalty plus ten percent per  
annum on any amounts owed" under § 339 205 4, RSMo Supp 2011, (2) after  
an evidentiary hearing, vacate and set aside the penalty imposed herein and  
may probate suspend revoke, or otherwise lawfully discipline McBride  
Brokerage's license under § 324 042, RSMo Supp 2011 and (3) deny  
discipline or refuse to renew or reinstate Reeves license under  
§ 339 205 7 RSMo Supp 2011

16 This Settlement Agreement does not bind the MREC or restrict the remedies available to it concerning any future violations by McBride Brokerage of Chapter 621 RSMo and Chapter 339 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 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

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

19 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

20 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

21 McBride Brokerage together with its partners, shareholders, officers directors 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

22 McBride Brokerage understands that it 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 McBride Brokerage s license If McBride Brokerage desires the Administrative Hearing Commission to review this Settlement Agreement McBride Brokerage 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

23 If McBride Brokerage 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 McBride Brokerage'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 Davis as allowed by law If McBride Brokerage 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

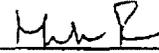
MCBRIDE & SON  
BROKERAGE COMPANY

MISSOURI REAL ESTATE  
COMMISSION

By  - 7/10/12 -  
John P. "Jack" Davis Date  
Title Broker Officer

  
Janet Carder Executive Director  
Date Sept 6, 2012

CHRIS KOSTER  
Attorney General



---

MEGAN KADE FEWELL  
Assistant Attorney General  
Missouri Bar No 61940

Supreme Court Building  
207 West High Street  
P O Box 899  
Jefferson City MO 65102  
Telephone 573 751 4145  
Telefax 573 751 5660  
Attorneys for the MREC