

**SETTLEMENT AGREEMENT
BETWEEN
MISSOURI REAL ESTATE COMMISSION
AND
BRETT PRESKO**

Brett Presko (Presko) and the Missouri Real Estate Commission (MREC) enter into this Settlement Agreement for the purpose of resolving the question of whether Presko's license as a Real Estate Salesperson, no. 2000153295, will be subject to discipline. Pursuant to Section 536.060, RSMo,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 Section 621.110, RSMo. The MREC and Presko jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to Section 621.045, RSMo.

Presko 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 Revised Statutes of Missouri, Supp. 2013, 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 Presko 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 him by law, Presko 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.

Presko 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. Presko stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the MREC that Presko's license as a Real Estate Salesperson, license no. 000153295, is subject to disciplinary action by the MREC in accordance with the relevant provisions

of Chapter 621, RSMo, and Sections 339.010 through 339.205 and 339.710 through 339.855, RSMo, as amended.

The parties stipulate and agree that the disciplinary order agreed to by the MREC and Presko in Part II herein is based only on the agreement set out in Part I herein. Presko 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 Presko herein jointly stipulate to the following:

1. Section 339.040.1, RSMo, states in part:

Licenses shall be granted only to persons who present ... satisfactory proof to the commission that they:

- (1) Are persons of good moral character; and
- (2) Bear a good reputation for honesty, integrity, and fair dealing; and
- (3) Are competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public.

2. Section 339.020, RSMo, states:

It shall be unlawful for any person, partnership, limited partnership, limited liability company, association, professional corporation, or corporation, foreign or domestic, to act as a real estate broker, real estate broker-salesperson, or real estate salesperson, or to advertise or assume to act as such without a license first procured from the commission.

3. Section 339.100.2, RSMo, states in part:

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:

(2) Making substantial misrepresentations or false promises or suppression, concealment or omission of material facts in the conduct of his or her business or pursuing a flagrant and continued course of misrepresentation through agents, salespersons, advertising or otherwise in any transaction;

(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;

(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....

4. The Missouri Real Estate Commission is an agency of the State of Missouri, created and established pursuant to Section 339.120, RSMo, for the

purpose of executing and enforcing Sections 339.010 to 339.205 and 339.710 to 339.855, RSMo, as to Real Estate Agents and Real Estate Brokers.

5. Respondent, Brett Presko, is an adult individual whose registered address is 6923 North Colorado Avenue, Kansas City, Missouri 64119, and who holds a Missouri license as Real Estate Broker Associate, no. 2000153295.

6. On May 17, 2014, Presko's license was suspended for failure to pay Missouri Income Tax under the terms of Section 324.010, RSMo, and it has not been reinstated. Presko's license expired September 30, 2014, and has not been renewed.

7. Presko's license previously expired on September 30, 2012.

8. Between September 30, 2012, and November 17, 2013, Presko participated in the following real estate transactions while his real estate salesperson license was expired:

a. 7129 N. Quincy Ave., Kansas City, Missouri 64119.

Commission paid to Presko \$7,498.50 on the closing date of September 28, 2012;

b. 7125 N. Quincy Ave., Kansas City, Missouri 64119.

Commission paid to Presko \$2,250.00 on the closing date of November 16, 2012.

c. 6011 N. forest Ave., Gladstone, Missouri 64118.

Commission paid to Presko \$729.00 on the closing date of November 15, 2012;

d. 1101 NW 94th St., Kansas City, Missouri 64155.

Commission paid to Presko \$9,120.00 on the closing date of December 3, 2012;

e. 3508 N. Park Ave., Kansas City, Missouri 64116.

Commission paid to Presko \$1,690.00 on the closing date of April 30, 2013;

f. 2403 NE 64th St., Gladstone, Missouri. Commission paid to Presko \$1,000.00 on the closing date of June 14, 2013;

g. 6905 N. Hardesty Ave., Kansas City, Missouri 64119.

Commission paid to Presko \$7,170.00 on the closing date of June 28, 2013;

h. 219 NW 107th St., Kansas City, Missouri 64155.

Commission paid to Presko \$4,500.00 on the closing date of July 1, 2013;

i. 11504 N. Distler Ave., Kansas City, Missouri 64157.

Commission paid to Presko \$4,575.00 on the closing date of July 8, 2013; and

j. 7016 N. Crystal Ave., Kansas City, Missouri 64119.

Commission paid to Presko \$3,900.00 on the closing date of August 16, 2013;

k. 5708 N. Myrtle Ave., Kansas City, Missouri 64119.

Commission paid to Presko \$1,599.50 on the closing date of August 15, 2013;

l. 5307 N. Lydia Ave., Kansas City, Missouri 64118.

Commission paid to Presko \$845.40 on the closing date of August 7, 2013;

m. 4312 NE 51st St., Kansas City, Missouri 64119.

Commission paid to Presko \$3,300.00 on the closing date of September 7, 2013; and

n. Two transactions on 3508 N. Park Ave., Kansas City, Missouri 64116 with scheduled closing dates of November 8, 2012 and June 21, 2013, which did not close.

9. Presko's license was reinstated on November 17, 2013.

10. Each time Presko participated in a real estate closing and accepted a commission while his license was expired, he engaged in unlicensed practice as a real estate salesperson.

11. Presko represented his father, Joseph Presko, and his company Presko Custom Homes LLC in the sale of various properties, including one at 3508 North Park Avenue, Kansas City, Missouri.

12. On May 25, 2013, Presko showed the Park Avenue property to potential buyers Joseph and Ann Curcuru and their buyers' agent, Erika Waggener.

13. Presko delivered to the Curcurus an inspection report on the home performed by Kyle Minear of Preferred Home Inspections, LLC, which had been prepared for a previous buyer in a transaction that did not close.

14. The Curcurus made an offer on the property, and on May 28, 2013, Presko sent a counteroffer from the seller to Ms. Waggener.

15. On May 30, 2013, the Curcurus accepted the counteroffer, agreeing to buy the house as is subject to having it reinspected, and reserving the right to cancel within the inspection period.

16. The parties signed a sales contract, in connection with which Presko provided the buyers with a Sellers Disclosure and Condition of Property Addendum.

17. On Line 88 of the Sellers Disclosure and Condition of Property Addendum, the seller check a box marked "no" in response to a question, "Any water leakage or dampness in the house, crawl space, or basement?"

18. The representation on the Sellers Disclosure and Condition of Property Addendum that no water leakage had occurred was false, as the original version of the Minear report clearly indicated significant water leakage from a broken upstairs faucet.

19. The version of the Minear report given to the Curcurus by Presko did not include the section disclosing the water damage.

20. On June 7, 2013, the Curcuros met with Kyle Minear at the house, at which time Minear first disclosed to them that an inspection conducted March 22, 2013, on behalf of a previous buyer named Cody Myers, found that a leaking upstairs faucet had resulted in two inches of water on the kitchen floor, water dripping from the light fixtures, and significant moisture in the walls.

21. In an email dated June 7, 2013, Ms. Waggener notified Presko that the Curcurus had learned the truth about the condition of the house and were exercising their option to cancel.

22. In an email in response to Waggener's email, Presko wrote, "After the inspection we went in and fixed a lot of things on the inspection, I was under the impression everything regarding the water was taken care of and apologize for what happened." In so doing, Presko acknowledged that he was aware of the water leakage issue at the time of the prior inspection.

23. Presko was aware that significant water leakage had occurred in the house, but withheld this information from the Curcurus and provided them with a Seller Disclosure and Condition of Property Addendum that falsely represented there had been no water leakage.

24. By continuing to practice as a real estate salesperson after his license expired, Presko violated Section 339.020, RSMo, which is cause for discipline under the terms of Section 339.100.2(15), RSMo.

25. By providing a false Seller's Disclosure and Condition of Property Addendum and a misleading home inspection report to the Curcurus, Presko made substantial misrepresentations or suppression, concealment or omission of material facts in the conduct of his or her business in a transaction, which is cause for discipline under Section 339.100.2(2), RSMo.

26. By providing a false Seller's Disclosure and Condition of Property Addendum and a misleading home inspection report to the Curcurus, Presko committed an act which would otherwise be grounds for the commission to refuse to issue a license under section 339.040, RSMo, which is cause for discipline under Section 339.100.2(16), RSMo.

27. By providing a false Seller's Disclosure and Condition of Property Addendum and a misleading home inspection report to the Curcurus, Presko committed conduct which constitutes untrustworthy, improper or fraudulent

business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence, which is cause for discipline under Section 339.100.2(19), RSMo.

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 Section 536.060, RSMo, and Section 621.045.4 and 621.110, RSMo.

1. **Presko's license as a Real Estate Salesperson is hereby REVOKED and ALL INDICIA OF licensure SHALL BE SURRENDERED IMMEDIATELY** upon this Settlement Agreement becoming effective.

2. This Settlement Agreement does not bind the MREC or restrict the remedies available to it concerning any future violations by Presko of Sections 339.010 through 339.205 and 339.710 through 339.855, RSMo, as amended, or the regulations promulgated thereunder, or of the terms and conditions of this Settlement Agreement.

3. 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.

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

5. 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.

6. 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 324, 339, and 610, RSMo, as amended.

7. Presko, together with his 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

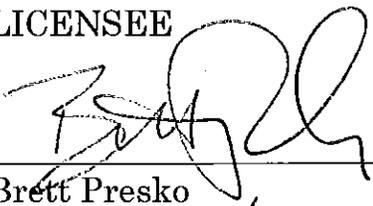
limited to, any claims pursuant to Section 536.087, RSMo, as amended, or any claim arising under 42 U.S.C. Section 1983, which now or in the future may be based upon, arise out of, or relate to any of the matters raised in this case or its litigation or from the negotiation or execution of this Settlement 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.

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

9. If Presko 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 Presko'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 Presko as allowed by law. If Presko 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



Brett Presko

Date: 12/14/15

Missouri Real Estate Commission

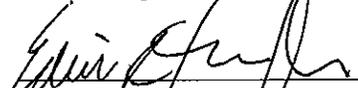


Joseph Denkler, Executive Director

Date: 12/28/15

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