

SETTLEMENT AGREEMENT BETWEEN
MISSOURI REAL ESTATE APPRAISERS COMMISSION
AND
MICHAEL A. NICHOLS

RECEIVED

APR 14 2009

Michael A. Nichols (“Nichols”) and the Missouri Real Estate Appraisers Commission (“MREAC”) enter into this Settlement Agreement for the purpose of resolving the question of whether Nichols’s license as a state-licensed real estate appraiser, no. 2002003005, 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 Cum. Supp. 2008. The MREAC and Nichols jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo Cum. Supp. 2008.

Nichols 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 Nichols 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, Nichols 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.

Nichols acknowledges that he has received documents supporting the MREAC's determination that cause exists for discipline, along with citations to law and/or regulations the MREAC believes were violated. Nichols stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the MREAC that Nichols's license as a state-licensed real estate appraiser, license no. 2002003005, is subject to disciplinary action by the MREAC in accordance with the relevant provisions of Chapter 621, RSMo Cum. Supp. 2008, and Chapter 339, RSMo, as amended.

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

herein. Nichols 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

Based upon the foregoing, the MREAC and Nichols herein jointly stipulate to the following:

1. The MREAC was established pursuant to § 339.507.1, RSMo (Cum. Supp. 2008), for the purpose of executing and enforcing the provisions of §§ 339.500 through 339.549, RSMo, as amended.

2. Nichols is licensed by the MREAC as a state-licensed real estate appraiser, license number 2002003005. Nichol's license was at all times relevant hereto, current and active.

3. On or about August 27, 2007, Nichols was informed by the U.S. Department of Housing and Urban Development ("HUD") of its intention to remove him from the Federal Housing Authority ("FHA") Approved Roster for a period of six (6) months. In addition, HUD required that Nichols complete seven (7) hours of remedial education.

4. Effective November 6, 2007, and as a result of Nichols' above-mentioned removal from the FHA Approved Roster, Nichols became ineligible to perform

appraisals for FHA insured transactions, with eligibility returning no sooner than May 6, 2008.

5. HUD's action was based on its review of the FHA file appraisal reports completed by Nichols on the following properties:

- a. 611 S. Park Dr., Raymore, MO 64083
- b. 410 Cochise Dr., Independence, MO 64056
- c. 1704 N. Dodgion St., Independence, MO 64050
- d. 580 S. Oxford Ave., Independence, MO 64053
- e. 3400 S. Arlington Ave., Independence, MO 64052

6. HUD stated that its decision to issue these sanctions was based on the following findings, each of which constitutes a violation and deficiency present in the appraisal report completed for at least one of the above-mentioned properties:

- a. Nichols' failure to provide an analysis of the Listing and Agreement of Sale for the subject property in accordance with HUD Handbook 4150.2 and the USPAP Definition of Market Value, and/or failure to provide a three-year sales history of the subject property as required by USPAP.
- b. Nichols' failure to provide complete and accurate data for the subject property in accordance with HUD Handbook 4150.2, Chapter 5 and Appendix D, and USPAP requirements.
- c. Nichols' failure to identify required repairs for the subject property and to accurately complete the Notice to the Lender VC Condition Sheet and/or the Homebuyers Summary form per HUD Handbook 4150.2, Section 5.

- d. Nichols' Failure to provide complete and accurate data regarding the overall description of the subject's neighborhood in accordance with HUD Handbook 4150.2, Chapter 5.
- e. Nichols' failure to provide reasonable and supported adjustments and/or required comments for comparable properties as required by HUD Handbook 4150.2, paragraph 4-6, and USPAP requirements, resulting in overvaluation of the subject property.
- f. Nichols' failure to provide accurate, specific data for the comparable properties required for accurate comparison and value determination of the subject property as required by HUD Handbook 4150.2.
- g. Nichols' failure to properly verify comparable sales data as required by HUD Mortgage Letter 2005-02.
- h. Nichols' failure to use the best available comparable properties as required by HUD Handbook 4150.2, paragraph 4-6 (A-2), resulting in overvaluation of the subject property.
- i. Nichols' failure to properly identify and analyze all prior sales of the subject property in the last three years which may facilitate "land flip" deals, in compliance with USPAP Standards 1.2, and 10, as detailed in Standards Rule 1-5b. and SMT-10, E.6., and HUD regulations that require compliance to USPAP standards.
- j. Nichols' failure to provide a complete and accurate overall description of the subject property's improvements in accordance with HUD Handbook 4150.2, Chapter 5, Appendix D, and USPAP requirements.

7. The above-listed deficiencies violate the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation.

8. The U.S. Department of Housing and Urban Development is an agency of the federal government of the United States of America.

II.

Joint Statements and Conclusions of Law

1. Section 339.532.2, RSMo, state in pertinent part:

“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 or her certificate or license for any one or any combination of the following causes:

“(7) Failure to comply with the Uniform Standards of Professional Appraisal Practice promulgated by the appraisal standards board of the appraisal foundation;

“(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;

“(18) Disciplinary action against the holder of a license, certificate or other right to practice any profession regulated pursuant to sections 339.500 to 339.549, imposed by another state, territory, federal agency or country upon grounds for which revocation or suspension is authorized in this state[.]”

2. Section 339.535, RSMo, requires state certified real estate appraisers and state licensed real estate appraisers to comply with the Uniform Standards of Professional

Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation.

3. The Appraisal Reports which were the subjects of the HUD review and decision were to conform with the 2005 edition of USPAP.

4. Cause exists to discipline Nichols' license under § 339.532.2 (18), RSMo, as a result of his removal from the FHA Appraiser Roster, because this sanction by HUD constitutes disciplinary action imposed by a federal agency for failure to comply with USPAP, a ground for which revocation or suspension is authorized in Missouri.

5. The bases upon which HUD disciplined Nichols would constitute cause to suspend or revoke his license in Missouri under § 339.532.2 (7) and (10), RSMo, based on the noted violations of USPAP.

III. **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.

1. **Nichols's license is on probation.** Nichols's license as a state-licensed real estate appraiser is hereby placed on PROBATION for a period of TWO (2) YEARS. The period of probation shall constitute the "disciplinary period." During the disciplinary period, Nichols shall be entitled to practice as a Real Estate Appraiser under Chapter 339, RSMo, as amended, provided Nichols adheres to all the terms of this agreement.

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

A. Nichols shall submit written reports to the MREAC by no later than January 1 and July 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 July 1, 2009. The final written report shall be submitted to the MREAC 90 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. Nichols is responsible for assuring that the reports are submitted to and received by the MREAC.

B. During the disciplinary period, Nichols 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 January 1 and July 1 during each year of the disciplinary period. The first log shall be submitted on or before July 1, 2009. The last log shall be submitted to the MREAC 90 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. Nichols is responsible for assuring that the logs are submitted to and received by the MREAC. Upon MREAC request, Nichols shall submit copies of his work samples for MREAC review.

C. Within six months after the effective date of this Settlement Agreement, Nichols 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, Nichols shall submit verification to the MREAC of successful completion of a Thirty (30)-hour approved course, including examination, on the Sales Comparison Analysis.

E. Nichols may not apply the education required by this Settlement Agreement to satisfy the continuing education hours required for license renewal.

F. During the disciplinary period, Nichols shall not serve as a supervising appraiser to trainee real estate appraisers under 20 CSR 2245-3.005. Within ten days of the effective date of this Settlement Agreement, Nichols shall advise each trainee real estate appraiser working under him that the supervisory relationship is terminated and comply with all other requirements of 20 CSR 2245-3.005 regarding the termination of the supervisory relationship.

G. During the disciplinary period, Nichols 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. Nichols shall

notify the MREAC in writing of any change in address or telephone number within 15 days of a change in this information.

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

I. During the disciplinary period, Nichols 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 Nichol's license 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. Nichols 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. Nichols 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 Nichols removes himself from the state of Missouri, ceases to be currently licensed 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, unlicensed status or unknown whereabouts shall not be deemed or taken as any part of the disciplinary period.

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

4. 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.

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

6. 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.

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

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

9. 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.

10. 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.

11. Nichols, together with his partners, 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.

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

If Nichols 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 Nichols's license. If Nichols 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



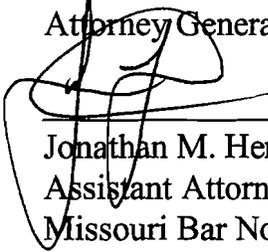
Michael A. Nichols 4/26/09
Date

MISSOURI REAL ESTATE
APPRAISERS COMMISSION



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