

**BEFORE THE REAL ESTATE APPRAISER BOARD  
STATE OF OKLAHOMA**

In the Matter of Ben B. Boothe and Richard J.  
Tibbenham

Complaint #14-024

**SETTLEMENT AGREEMENT**

This Settlement Agreement is made and entered into pursuant to 75 O.S. § 309(E) by and between the Oklahoma Real Estate Appraiser Board (“OREAB”) and Ben B. Boothe (“Boothe”) and Richard J. Tibbenham (“Tibbenham”) (collectively the “Respondents”).

WHEREAS, in the fall of 2014, the OREAB filed Appraiser Grievances against Respondents, pursuant to 600 O.A.C. § 15-1-1 et seq., alleging that Respondents engaged in acts that constituted a violation(s) of the Oklahoma Certified Real Estate Appraisers Act, 59 O.S. § 858-700 et seq.

WHEREAS, Respondents deny any wrongdoing, including but not limited to a violation of the Act, the Uniform Standards of Professional Appraisal Practice, or any other law, rule, regulation, standard, guideline, or the like. However, Respondents recognize that if a hearing should occur, violations may or may not be found.

**AGREEMENT**

In consideration of the promises and covenants contained herein and for other valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

1. This agreement resolves all possible issues pertaining to the subject appraisal and the above-captioned action.
2. Respondents agree that they shall not apply for licensure, including temporary practice permits, in the State of Oklahoma, for a period of five (5) years from the last date of execution on this Settlement Agreement. If Respondents fail to abide by this term and do apply

for a license, including temporary permit, in the State of Oklahoma within five (5) years from the last date of execution of this Settlement Agreement, such application shall be summarily denied, and Respondents agree that they shall have no right of recourse.

3. The parties are entering this Settlement Agreement as a compromise of disputed claims and to avoid the cost and expense of further litigation. Neither this Settlement Agreement nor any of its provisions, terms, or conditions constitute an admission of liability or wrongdoing on the part of Respondents, or may be offered or received in evidence in any action or proceeding as evidence of liability or wrongdoing or as evidence of a disciplinary action taken against Respondents.

4. The OREAB represents and warrants that there are presently no grievances and/or complaints against Respondents at issue before the OREAB except those at issue in the above-captioned action and which are being dismissed and released by virtue of this Settlement Agreement.

5. All parties to this Settlement Agreement have been represented by counsel.

6. Each party shall bear its own costs and attorneys' fees in connection with the above-captioned Action and this Settlement Agreement.

7. This OREAB Settlement Agreement shall remain confidential except to the extent disclosure is required by the Oklahoma Open Records Act, 51 O.S. §§24-A.1 – 24A.30. Notwithstanding this provision, any party to this agreement may provide a copy of this agreement to the Appraisal Institute or provide this agreement pursuant to its standard and mandatory reporting requirements.

8. This Agreement may be executed in one or more counterparts, but all of such counterparts, taken together, shall constitute only one Agreement. When delivered to the other

party, facsimile and visual digital reproductions of original signatures shall be effective the same as if they were the originals.

9. This Agreement shall be governed by the internal laws of the State of Oklahoma without regard to conflict of law principles.

10. This Settlement Agreement contains the entire agreement between the parties hereto and all provisions of this Settlement Agreement are contractual and not a mere recital. The Parties acknowledge that no representation or promise not expressly set forth in this Settlement Agreement has been made by any of the Parties hereto or any of their agents, employees, representatives, or attorneys. No modification of, or amendment to, this Settlement Agreement shall be valid unless it is in writing and signed by the Parties. In the event any portion of this Settlement Agreement shall be declared illegal or unenforceable as a matter of law, the remainder of the Settlement Agreement shall remain in full force and effect.

11. The undersigned Respondents agree that presentation of this Settlement Agreement to the OREAB without the undersigned Respondents being present shall not constitute an improper *ex parte* communication between the OREAB and its counsel.

12. The Parties represent and warrant to one another that each party has authority to enter into this binding Settlement Agreement. The OREAB represents and warrants that the undersigned have full authority to execute this Settlement Agreement on behalf of the OREAB and bind the OREAB to the terms set forth herein.

**SETTLEMENT AGREEMENT TO BE ACCEPTED OR REJECTED BY THE BOARD**

13. It is hereby agreed between the parties that this Settlement Agreement shall be presented to the Board with recommendation for approval of the Board at the next scheduled meeting of the Board. The Respondents understand that the Board is free to accept or reject this

Settlement Agreement and, if rejected by the Board, a formal hearing on the complaint may be held. If the Board does not accept the Settlement Agreement, it shall be regarded as null and void. Admissions by Respondents in the Settlement Agreement will not be regarded as evidence against them at the subsequent disciplinary hearing. Respondents will be free to defend themselves and no inferences will be made from their willingness to have entered this agreement. It is agreed that neither the presentation of the Settlement Agreement nor the Board's consideration of the Settlement Agreement will be deemed to have unfairly or illegally prejudiced the Board or its individual members and therefore will not be grounds for precluding the Board or any individual Board member from further participation in proceedings related to the matters set forth in the Settlement Agreement in the event that the Settlement Agreement is not accepted by the Board. If the Settlement Agreement is accepted by the Board, the Board will take no further action in prosecuting the above-captioned action.

RESPONDENTS:

  
\_\_\_\_\_  
BEN B. BOOTHE

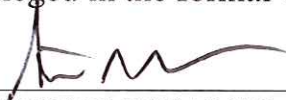
4/27/2017  
\_\_\_\_\_  
DATE

  
\_\_\_\_\_  
RICHARD J. HIBBENHAM

4/28/17  
\_\_\_\_\_  
DATE

**CERTIFICATE OF BOARD PROSECUTING ATTORNEY**

I believe this Settlement Agreement to be in the best interests of the Oklahoma Real Estate Appraiser Board, the State of Oklahoma and the Respondent with regard to the violations alleged in the formal Complaint.

  
\_\_\_\_\_  
STEPHEN MCCALED, OBA #15649  
Board Prosecutor  
3625 NW 56<sup>th</sup> Street, Suite 100  
Oklahoma City, Oklahoma 73112


5-31-17  
\_\_\_\_\_  
DATE

IT IS SO ORDERED on this 31<sup>th</sup> day of June, 2017.

  
\_\_\_\_\_  
ERIC SCHOEN, Board Secretary  
Oklahoma Real Estate Appraiser Board



**OKLAHOMA REAL ESTATE  
APPRAISER BOARD**

By:   
\_\_\_\_\_  
BRYAN NEAL, OBA #6590  
Assistant Attorney General  
Attorney for the Board  
313 NE 21<sup>st</sup> Street  
Oklahoma City, Oklahoma 73105

**CERTIFICATE OF MAILING**

I, Christine McEntire, hereby certify that on the 14<sup>th</sup> day of July, 2017 a true and correct copy of the above and foregoing Settlement Agreement was placed in the U.S. Mail, with postage pre-paid, by certified mail, return receipt requested to:

**Greg T. Metcalfe**

GABLE GOTWALS

7016 3010 0000 2706 6872

One Leadership Square, Suite 1500

211 North Robinson Avenue

Oklahoma City, OK 73102

and that copies were forwarded by first class mail to the following:

**Bryan Neal, Assistant Attorney General**

OFFICE OF THE ATTORNEY GENERAL

313 N.E. 21<sup>st</sup> Street

Oklahoma City, OK 73105

**Stephen L. McCaleb**

DERRYBERRY & NAIFEH

4800 N. Lincoln Boulevard

Oklahoma City, OK 73105



CHRISTINE MCENTIRE



FILED

JUL 14 2017

OFFICE OF ATTORNEY GENERAL  
STATE OF OKLAHOMA

Real Estate Appraiser Board  
State of Oklahoma

**ATTORNEY GENERAL OPINION  
2017-521A**

Christine McEntire, Director  
Oklahoma Real Estate Appraiser Board  
3625 N.W. 56th St., Ste. 100  
Oklahoma City, OK 73112

July 13, 2017

Dear Director McEntire:

This office has received your request for a written Attorney General Opinion regarding agency action that the Oklahoma Real Estate Appraiser Board intends to take pursuant a consent agreement with respect to Board Complaint #14-024. The proposed action is to prohibit a New Mexico certified general appraiser and a California certified general appraiser from applying for licensure, including temporary practice permits, in Oklahoma for five years. The New Mexico appraiser submitted an application for a temporary practice permit, and upon request for documentation relating to disciplinary actions against the appraiser in Texas, abandoned the application. Ten days later, a temporary practice application submitted by a California appraiser was received. A review of the appraisal for the subject property revealed that the New Mexico appraiser prepared the appraisal report, certified an inspection of the property, and was the primary signature on the report. Thus, the New Mexico appraiser engaged in unlicensed appraisal practice and the California appraiser assisted in circumventing the regulation of appraisers.

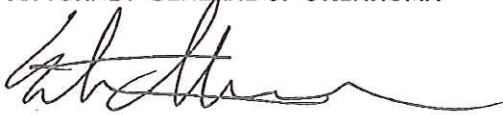
The Oklahoma Certified Real Estate Appraisers Act, 59 O.S.2011 & Supp.2016, §§ 858-700-858-732, authorizes the Board to discipline licensees based on a "[v]iolati[on] of any of the provisions in the code of ethics set forth in [the Act]." 59 O.S.Supp.2016, § 858-723(C)(13). The Act requires adherence to the "current edition of" the Uniform Standards of Professional Appraisal Practice ("USPAP"), 59 O.S.2011, § 858-726, which is the 2016-2017 edition. The Ethics Rule of the USPAP requires an appraiser to "promote and preserve the public trust inherent in appraisal practice by observing the highest standards of professional ethics" and "comply with USPAP when obligated by law or regulation." USPAP-8. The action seeks to enforce requirements of professionalism embodied in the Act and in the USPAP. The Board may reasonably believe that the disciplinary action is necessary to prevent future violations.



It is, therefore, the official opinion of the Attorney General that the Oklahoma Real Estate Appraiser Board has adequate support for the conclusion that this action advances the State of Oklahoma's policy to uphold standards of competency and professionalism among real estate appraisers.



MIKE HUNTER  
ATTORNEY GENERAL OF OKLAHOMA



ETHAN SHANER  
DEPUTY GENERAL COUNSEL