

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION

In Re: Case no. 23-17590-EPK  
MV Realty PBC, LLC, *et al.*, Chapter 11  
Debtors. (Jointly Administered)

\_\_\_\_\_  
MV Realty PBC, LLC, *et al.*,  
Plaintiffs,

v. Adv. Proc. No. 23-01211-EPK

Office of the Attorney General,  
State of Florida,  
Department of Legal Affairs, *et al.*,

Defendants.  
\_\_\_\_\_

**DISCLOSURE OF EXPERT RICHARD FRYER**

Defendant, Office of the Attorney General, State of Florida, Department of Legal Affairs (the “State of Florida”), pursuant to Fed. R. Civ. P. 26(a)(2) and this Court’s Order Setting Evidentiary Hearing, [ECF No. 40], hereby discloses Richard Fryer as a witness who may testify pursuant to Fed. R. Civ. Pro. 702, 703, or 705, and further states as follows.

**(i) A complete statement of all opinions the witness will express and the basis and reasons for them**

The statement of Mr. Fryer’s opinions and the basis and reasons for them are contained in the Declaration of Richard T. Fryer, Licensed Florida Real Estate Broker served as Exhibit E to the State of Florida’s Motion for Temporary Injunction in the State of Florida v. MV Realty PBC, LLC, Amanda J. Zachman, Antony Mitchell, and



David Manchester, Case No. 22-CA-009958, currently pending in the Circuit Court of the Thirteenth Judicial Circuit in Hillsborough County, Florida. The State of Florida incorporates the Declaration of Richard T. Fryer in this Disclosure.

**(ii) the facts or data considered by the witness in forming them**

The facts or data considered by Mr. Fryer in forming his opinions are contained in the Exhibits to the Declaration of Richard T. Fryer, Licensed Florida Real Estate Broker served as Exhibit E to the State of Florida's Motion for Temporary Injunction in the State of Florida v. MV Realty PBC, LLC, Amanda J. Zachman, Antony Mitchell, and David Manchester, Case No. 22-CA-009958, currently pending in the Circuit Court of the Thirteenth Judicial Circuit in Hillsborough County, Florida. The State of Florida incorporates all Exhibits to the Declaration of Richard T. Fryer in this Disclosure; however, the many of the Exhibits contain documents that Plaintiffs, MV Realty PBC, LLC, et al, have asserted constitute trade secrets and are protected from public disclosure. Additionally, since Mr. Fryer quotes these Exhibits in his Affidavit, some portions of the attached, incorporated Affidavit have been redacted. The State of Florida has already provided an unredacted copy the Affidavit of all the Exhibits to counsel for Plaintiffs, and will work with counsel for Plaintiffs regarding the assertion of trade secret protection so that a complete Affidavit and Exhibits may be filed; and, if necessary, seeking guidance from the Court.

**(iii) any exhibits that will be used to summarize or support them**

Any exhibit used to summarize or support Mr. Fryer's opinions are contained in the Exhibits to the Declaration of Richard T. Fryer, Licensed Florida Real Estate



Broker served as Exhibit E to the State of Florida's Motion for Temporary Injunction in the State of Florida v. MV Realty PBC, LLC, Amanda J. Zachman, Antony Mitchell, and David Manchester, Case No. 22-CA-009958, currently pending in the Circuit Court of the Thirteenth Judicial Circuit in Hillsborough County, Florida. The State of Florida incorporates all Exhibits to the Declaration of Richard T. Fryer in this Disclosure.

**(iv) the witness's qualifications, including a list of all publications authored in the previous 10 years**

Mr. Fryer's qualifications are discussed in the Declaration of Richard T. Fryer at paragraphs two through eight, which are incorporated herein. Mr. Fryer has not authored any publications in the previous ten years.

**(v) a list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition**

A list of cases in which Mr. Fryer has testified at deposition or trial is attached as Exhibit 1 to the Declaration of Richard T. Fryer and incorporated into this Disclosure.

**(vi) a statement of the compensation to be paid for the study and testimony in the case**

Mr. Fryer receives \$350 per hour for study and testimony in this case.

Dated: January 5, 2024.

Respectfully submitted,

ASHLEY MOODY  
ATTORNEY GENERAL

/s/ Ellen K. Lyons

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on January 5, 2024, a true and correct copy of the foregoing was provided by electronic mail through this Court's CM/ECF electronic noticing system to: 1) Debtors' counsel, Michael D. Seese, Esq., 101 NE 3rd Ave., Suite 1500, Ft. Lauderdale, FL 33301; 2) Office of the US Trustee, 51 S.W. 1st Ave., Suite 1204, Miami, FL 33130 and 3) to all others who requested electronic noticing.

/s/ Ellen K. Lyons

Ellen K. Lyons, FBN 57819

Special Counsel, Assistant Attorney General



**IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA  
-CIVIL DIVISION-**

OFFICE OF THE ATTORNEY GENERAL,  
STATE OF FLORIDA,  
DEPARTMENT OF LEGAL AFFAIRS,

Plaintiff,

CASE NO.: 22-CA-009958  
DIVISION: L

v.

MV REALTY PBC, LLC, a Florida limited  
liability company, AMANDA J. ZACHMAN  
f/k/a AMANDA ZUCKERMAN, an individual,  
ANTONY MITCHELL, an individual,  
DAVID MANCHESTER, an individual.,

Defendants.

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**DECLARATION OF RICHARD T. FRYER, LICENSED  
FLORIDA REAL ESTATE BROKER**

I, Richard T Fryer, hereby state that I have knowledge of the facts set forth below. If called as a witness, I could and would testify as follows:

**I. Executive Summary**

1. As an expert in the Florida Real Estate Industry, the MV Homeowner Benefit Agreement (“HBA”) and Memorandum they file to enforce that agreement are harmful to Florida homeowners and consumers because: (i) the HBA’s 40-year term is too long of a period



to bind a homeowner to a personal services real estate listing agreement; (ii) MV Realty's practice of filing liens to coerce payment of a commission or a termination fee is improper; (iii) MV Realty is not incentivized to perform real estate services and thus can sit back and harvest Early Termination Fees; (iv) MV Realty's Memoranda cloud homeowners' titles restricting the exchange of real estate and preventing mortgage refinances into lower rates; (v) MV Realty is unlike other real estate brokerages because their business model makes money through harvesting Early Termination Fees and through liens and often lawsuits against their own customers; (vi) and for these reasons, MV Realty is not a real estate brokerage that acts in the best interest of its customers.

## **II. Background**

2. I am a real estate broker and am the Qualifying Broker for Southern Style Real Estate, Inc., which enables me to operate a brokerage, hire sales associates and make policy decisions for the brokerage. A sales associate is a licensed professional who must place their license with a broker in order to provide real estate services to another for compensation.



3. I have been in the housing industry since graduation from Florida State University with an MBA Degree in management in 1971. I worked in the manufactured home industry; as a project manager for a condominium development project; and then became a sales manager for several large Electronic Realty Associates (“ERA”) Brokerages in the Orlando area, where I began my training career delivering sales training classes to new licensees<sup>1</sup> with the companies for which I worked.

4. I had a passion for teaching and sharing knowledge about real estate. I began teaching for a private real estate school and then was hired to teach in the Division of Extended Studies program for real estate at the University of Central Florida.

5. In 1983 my wife and I opened our own real estate school, The Institute of Florida Real Estate Careers, Inc, (“IFREC”) which we grew to be one of Florida’s largest privately owned real estate schools. We sold that business to the largest school in Florida in May of 2020.

6. In addition to teaching, my wife and I also formed Southern Style Real Estate, Inc. in 1994, where I am the qualifying broker.

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<sup>1</sup> As used throughout this Declaration, “licensees” means licensed brokers or sales associate.



Southern Style Real Estate, Inc., is a boutique brokerage based in Mount Dora, Florida. Today I keep the firm active for family and friends. The firm has three registered sales associates who work part time.

7. I was appointed to the Florida Real Estate Commission (“FREC”) by Governor Scott in December of 2013 and served for 8 years. During my tenure on the Commission, I was honored by the other members to be elected as the Chair in 2015 and 2021. Being a Florida Real Estate Commissioner gave me an even better knowledge of industry practices and made me an even better teacher and expert.

8. After selling IFREC, we created the Fryer Professional Group, Inc. and licensed this business as a real estate school so that I would be able to continue offering continuing education courses and be able to issue credits toward renewal of licenses through the Department of Business and Professional Regulation (“DBPR”).

9. I began working as an expert witness in real estate litigation in 2006. I have been retained as an expert witness on 35 occasions. I have been hired by plaintiffs in six percent of those engagements and by defendants in ninety-four percent. A list of the cases in which I have testified by deposition or at trial is included as Exhibit 1 to this



declaration. In 2022, I derived 14 percent of my annual gross income from expert witness engagements.

10. I have been engaged as an expert witness in this matter to provide an opinion about MV Realty's acts and practices in the Florida real estate market. I am receiving \$325 per hour for my work in this case. The materials I have reviewed to provide my opinions are attached as Exhibit 2 to this Declaration.

### **III. The life of a listing real estate practitioner**

11. Most real estate professionals are taught the art of prospecting, sales techniques and how to obtain, market, sell and close on property. About 90 percent of professionals practice residential sales.

12. Newly licensed professionals have no database of leads or referrals to whom they should market their real estate services and they are taught how to prospect for leads. There are a myriad of ways to prospect for new sellers and buyers which the industry has historically taught. In more recent times technology has added new and vibrant ways to enhance that activity.

13. Historically professionals have been taught to set up a farm area to work which is a geographic area in their community in which



they choose to specialize. In years past that was limited mostly to a manageable geographical area where the professional would often go door to door regularly and seek out sellers and buyers. That activity has diminished considerably due to a number of factors, beginning with the rapid growth of gated subdivisions which do not permit door to door solicitation. The other main factor is the use of technology which has led to seismic shifts in the industry making the business model much more efficient.

14. One of the major changes that occurred was the publication of all public records electronically which enabled professionals to modify their farming techniques from physically working a farm area to using technology to enable them to use direct mail efficiently through the use of mail merge functions of the public records and modern Multiple Listing Services (“MLSs”) to engage in what is known as drip marketing where post cards are sent out to the farm area regularly, typically once a month.

15. Professionals who work for traditional real estate companies also have the opportunity to take advantage of what is known as “floor time” where they field incoming calls to the brokerage during their shifts and keep any leads they may obtain during that time.



16. There are also business models where the brokerage controls the incoming leads that come into the brokerage and distributes them to agents in the brokerage, but today those companies are few and far between. In the last three decades or so, the business has changed significantly and is now very much agent centric rather than broker centric. Individual professionals create their own brand within the brokerage brand and control all leads that come to them through their brand marketing. The advent of “Teams” in real estate firms is another huge change in the way professionals work within a brokerage.

17. Today’s professional has many more ways to obtain prospects than ever before in the history of our business. Even though farming still constitutes a powerful way to obtain leads to owners who want to sell their homes, there are many other ways to do so.

18. According to The National Association of REALTORS®, (“NAR”) 2021 Profile of Home Buyers and Sellers,<sup>2</sup> seasoned professionals derive over 50% of their sellers and buyers through referrals from past clients, customers, friends and relatives. By staying

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<sup>2</sup> Available at: <https://www.nar.realtor/sites/default/files/documents/2021-highlights-from-the-profile-of-home-buyers-and-sellers-11-11-2021.pdf>



in touch with previous clients and customers they will continue to patronize the professional they have worked with in the past. Real estate is a personal services industry and customers pick real estate professionals based on relationships, and trust, as well as knowledge of the local market.

19. In addition to direct mail activity, which is considered by some to be “old school,” but never loses its effectiveness, other technological changes have enabled professionals to obtain leads from many new sources. Today there are a number of aggregators of real estate data such as Realtor.com, Zillow, and Trulia, which are the most widely recognized, but there are many more. The three aggregators listed here all sell leads to professionals who wish to buy them. The aggregators frequently sell leads by zip code or geographical location. Professionals utilize those leads to contact consumers to offer their services to the consumer. The leads generated by aggregators are from prospective buyers or sellers who have gone to one of the various sites. Qualified leads are of people registered with the site who have asked to be contacted by a real estate professional. Approximately 85% of non-qualified leads are of little value.



20. The NAR, estimates that the average real estate lead conversion rate is 0.4%-1.2%. “However, not all leads are created equal [January 17, 2023]. Every lead you generate has the potential to transform into a paying customer. Unfortunately, not all of them do. According to the latest studies, only 10% to 15% of sales leads make it to the bottom of the sales funnel and convert into deals.”<sup>3</sup>

21. A massive shift took place in the industry when social media became such a phenomenon in society. Today, rarely does a professional use print media to market properties or themselves. For the last 10-15 years at the National Association of Realtor’s National Conventions a significant percentage of educational offerings deal with growing one’s business through the utilization of social media. Many professionals have become what is known today as “influencers” in real estate and have large followings on Facebook, Twitter, Instagram, YouTube and many other social media platforms.

22. There are still some practitioners who use the tried and true methods of prospecting such as cold calling those who advertise their homes for sale by owner, and handing out business cards wherever they go. Any real estate professional making cold calls should

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<sup>3</sup> <https://optinmonster.com/what-is-lead-quality-and-how-to-measure-it/>



subscribe to the National Do Not Call List. Those registered on the Do Not Call list may not be called and there potentially are steep fines for each violation. Some of the people called in this manner are either advertising their property For Sale by Owner or perhaps renters in apartment complexes.

23. In many cases, rather than cold calls, a licensee makes numerous follow up calls to current and past clients and customers in their database. The NAR and Florida Realtors have advised professionals not to use automated dialing functions in their Customer Relationship Management (“CRM”) system as it is highly likely to violate the Telephone Consumer Protection Act which also carries steep fines for violations.

24. Regardless of where or how a professional develops a prospect, the first step in listing a property is to attempt to obtain an appointment to meet with the sellers in their home. Prior to meeting the sellers at the first appointment the professional should have prepared a Comparative Market Analysis (“CMA”) which will indicate what their neighborhood property values suggest the property should sell for. At the first appointment, the real estate professional will start by asking to tour the property, during which time they will



look for things in the home that might lead them to believe that there is some common ground upon which they can build a relationship with the sellers. It could be children's sports trophies, or indications that the sellers are golfers or enjoy fishing or a myriad of other activities that the professional might also have in common with the sellers. This makes getting to know each other a lot more casual and comfortable.

25. Once rapport has been created, it is time to begin to find out exactly what the sellers goals are in in selling their current home and what they might be looking for in a new home if they are not leaving the area. If they are leaving the area the professional will usually attempt to get sellers to allow them to refer the sellers to another professional in the city or town where they plan to relocate, which would entitle the professional to a referral fee if the seller then purchases through the referred professional in the new location. At this point a discussion typically takes place about how much the seller would like to sell the home for, and for the introduction of the CMA into the conversation. The seller may have a different opinion about what their property is worth than the CMA indicates the property should sell for and the parties will have to discuss the options and attempt to arrive at a mutually agreeable selling price.



26. Before arriving at the home for this appointment a properly trained professional will have been able to fill out a good portion of the listing agreement because most MLSs today have the capability of auto populating a large amount of the basic information about the home from the public records. Many of the interior features and upgrades are then input into the agreement before signatures are affixed.

27. A seller should be advised at that time of all the marketing efforts the professional will initiate to maximize exposure and traffic to the property to generate as many showings as possible. The more people who are exposed to and who view a property, the more likely it will sell in a timely fashion and for the highest possible price. There is no guarantee that the listing sales associate or brokerage will generate the buyer who eventually purchases the home. The reason for utilizing the MLS is to provide exposure to thousands of professionals who might have buyers for that type of property in that location. As previously mentioned, today's professionals will place the property information on as many aggregator sites as possible to further maximize exposure to the property.



28. All listing agreements in Florida are required to have a definitive termination date. A typical residential listing agreement is for three (3) to six (6) months depending on the current market conditions. It is VERY rare for a residential listing to last more than six months. It is the job of the listing sales associate to follow up on all showings by any professional to get feedback on the thoughts of the potential buyers and any constructive criticism, including objections to the listed price, and provide the sellers with this information so that they can make informed, intelligent decisions about the transaction going forward.

29. When an offer is received from a buyer or a buyer's agent, the listing associate is responsible for presenting that offer to the sellers and beginning negotiations with them to see if a meeting of the minds is potentially achievable. Sometimes the sellers simply reject an offer as being totally unacceptable. Sometimes sellers will counteroffer which then initiates further negotiations with the buyer or buyer's agent. The most desirable outcome, of course, is that the sellers like the offer and accept it as it is written. Once an offer is accepted and the parties arrive at an effective date as determined in the Contract for Sale and Purchase, they now have a binding contract and



can begin to move toward a closing. It is again the responsibility of the listing associate to follow through and make sure all dates in the contract are adhered to by the seller and for the representative of the buyer to do the same on behalf of the buyer in order for the sale to get to the closing table.

30. Once all of the terms and conditions of the contract have been fulfilled by the parties, a closing is scheduled and at that time all documents, i.e., mortgages, notes, deed and closing disclosure are signed, money and title passes, and the buyer is given the keys to their new home. It is at this time that licensees earn their commission for a sale. We have a saying in the industry and that is “we get paid when the seller gets paid.” If no closing occurs, we typically do not receive a commission as the vast majority of real estate professionals are independent contractors/commissioned associates.

31. In my almost 50 years in this industry, I have only been aware of one or two companies paying for a LISTING, and in fact they listed the property at the time they paid the seller the fee offered. Once these few licensees paid for and listed the property, then they would initiate the steps mentioned above. Never previously has there been anyone I know of in this industry who has obtained a 40 year



entitlement to a listing or compensation by providing a seller with a nominal amount of money (compared to the value of the property) nor placed a “Memorandum,” otherwise known as a lien, on the property that would infringe on the property owner’s rights or inhibit them or their heirs from selling or refinancing their home or taking out a home equity loan in order to improve the home for four decades. MV Realty’s practice of paying for a listing and sitting back and not marketing the listing for a period of up to 40 years is not typical in the industry. MV Realty’s use of what are effectively 40-year listing agreements are antithetical to the personal services nature of the real estate industry.

32. In addition to the aforesaid, the average time of ownership for the average homeowner is somewhere around 10-12 years. Thus, MV Realty’s agreement term is almost certain to include a sale, refinancing, home equity loan, or foreclosure event during the 40-year term.

33. Real estate professionals can represent customers in several different ways. The most common way in Florida is as a transaction broker under § 475.278(1)(b)(2), Florida Statutes. Transaction brokers



must deal honestly and fairly with their customers and use skill, care, and diligence in their representation.

#### IV. MV Realty's practices and procedures

34. The MV Realty New Agent Orientation presentation describes [REDACTED], which are [REDACTED] and clearly states that these licensees are [REDACTED], as it is in the vast majority of real estate companies. The [REDACTED] are:

§ [REDACTED]

§ [REDACTED]

§ [REDACTED]

§ [REDACTED]

§ [REDACTED]

§ [REDACTED]

§ [REDACTED]

§ [REDACTED]:

§ [REDACTED]

§ [REDACTED]



§ [REDACTED]

[REDACTED]

Exhibit 2 at p. 174.

35. MV Realty’s “New Agent Orientation: Overview & Expectations” presentation also describes [REDACTED]

[REDACTED] as:

§ [REDACTED]

§ [REDACTED]

§ [REDACTED]

[REDACTED]

§ [REDACTED]

[REDACTED]

...

§ [REDACTED]

...

§ [REDACTED]

§ [REDACTED]

Exhibit 2 at p. 175.



36. This arrangement is similar to a payment schedule utilized by most builders in the form of draws against future commissions. The above define what constitutes quotas for results that are monitored.

37. When examining the above listed “[REDACTED]” it is clear that licensees at MV Realty are primarily compensated by a draw against commissions for selling HBA’s and not for selling real estate. As employees with mandated production for selling these agreements there is no incentive, nor time provided, to market and sell real estate as most real estate professionals do. The typical professional is compensated entirely on commissions and does not get paid until the seller gets paid at closing.

38. The average professional has to generate their own leads through myriad ways of prospecting. Today it can be from all of the Professional’s social media platforms, their own email campaigns, branding, local connections, building credibility with PR and through referrals. The longer a professional has been in the business the greater percentage of their business should come from referrals.

39. Based on what is presented in the MV Realty’s “New Agent Orientation: HBA Call Scripts” training their agents have [REDACTED]

[REDACTED]. [REDACTED]



[REDACTED]  
[REDACTED]  
[REDACTED] Exhibit 2, p. 67. [REDACTED]  
[REDACTED]  
[REDACTED] *Id.* [REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED] In these instances, many of the complainants and some of those who filed affidavits in this case had no idea who MV Realty was, how they got the person's phone information, and did not believe they had given permission to anyone to contact them.

40. The third major source of leads comes from [REDACTED]  
[REDACTED]. [REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED] Additionally, homeowners who go to MV Realty's Facebook page or view the Facebook advertisements are not marketed for real estate services as much as they are marketed with a message that they can get paid money with no obligation to repay it. This is different from marketing real estate services to homeowners.



41. In these cases, most of these consumers believe they are being offered cash upfront in exchange for an agreement to give MV a chance to list their home if and when they ever decide to sell. According to the evidence presented to the Florida Office of the Attorney General by complainants, many never understood that a cloud was going to be created on the title to their home via a recorded memorandum. The scripts and agreements speak to having an agreement that “runs with the land” and the average homeowner or consumer who is devoid of any significant real estate experience is unlikely to understand what that means.

42. Information provided in the training module on HBA Call Scripts contains a slide that explains that the agreement remains in place for 40 years. The context the agent is directed to use is that homeowners are staying in their homes longer than ever, which is a true statement. According to NAR, in 2008 the average homeowner stayed in their home for an average of 10 years and in 2018 the average was 13 years.<sup>4</sup> In Florida, however, which has always had more homeowners, the average time is between 7 and 8 years. The simple

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<sup>4</sup> *How long do homeowners stay in their homes*, NAR, January 8, 2020. (<https://www.nar.realtor/blogs/economists-outlook/how-long-do-homeowners-stay-in-their-homes>)



fact is that a very small percentage of individuals stay in a home for 40 years.

43. The job of an MV Realty licensee has little resemblance to the job of an actual real estate industry professional when one considers: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

44. In the New Agent Orientation: HBA Call Scripts presentation there is a slide that says: [REDACTED]

[REDACTED] Exhibit 2, p. 103.

Although, I do not claim to know whether MV Realty licensees meet a statutory definition of telemarketing, in a colloquial sense it is obvious that this is not a true statement. These agents **ARE**



Telemarketers who are also licensed real estate professionals, because

[REDACTED]

[REDACTED]. Even in days gone by when cold calling was a common practice in the real estate industry, rarely did anyone make [REDACTED]. There were SOME professionals who loved cold calling (most have always had an aversion to this practice) who might have equaled or exceeded these numbers but it was done because they wanted to do it to obtain prospects and these practitioners were few and far between. With the advent of state and federal do not call lists most have abandoned this practice entirely and only make follow up calls to those in their database in order to stay top of mind for them regarding any real estate needs they might have.

45. When reviewing the “New Agent Orientation: HBA Listing” training materials, it initially appears to be a fairly normal listing process when a homeowner wants to list and sell. Slide 5 describes [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]. Exhibit 2, p. 113. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

46. According to paragraph 1.b of the HBA agreement, if a client decides to sell, they are to contact MV Realty who will enter into a six (6) month listing agreement with the owner. *It is very rare in residential real estate today to see a six (6) month listing which is frequently a 3 or 4 month listing.* If MV Realty is “unable to procure a ready, willing, and able buyer for the Property on terms and conditions consistent with the applicable Listing Agreement,” as the listing price may have been reduced upon approval of Property Owner, “then for the sixty (60) day period immediately following the Exclusive Listing Period, (that sixty (60) day period, the ‘Owner Listing Period’), Property Owner may attempt to procure a buyer independent of Company’s efforts, at a price equal to or greater than the final listing price of the Property during the Exclusive Listing Period.” Exhibit 2 at p. 119. In subparagraph b. the closing of any sale procured during this sixty (60) day listing period must close within 60 days after the end of the Owner Listing Period.



47. The above language sounds wonderful to the untrained and naïve homeowner, but is rife with conditions that ALL favor MV Realty to the homeowner's detriment. The most glaring are, first, the requirement to find a buyer within sixty (60) days of the date the Owner Listing begins. In a very overheated market that may seem reasonable, but the normal market is not overheated and sixty (60) days to find a buyer and go under contract is an unreasonably short period. Second, the real catch is that the property sold via an Owner Listing must sell for a price equal to or greater than the MV listing price, putting a distressed owner at a significant disadvantage. If the owner must reduce the price to sell quickly due to personal financial hardship, a change in market or neighborhood conditions, or for any other reason, MV has an entitlement to an unearned commission. In a foreclosure sale or probate sale MV will demand a commission based on what they determined the value to be at the time they entered into the HBA agreement with the homeowner regardless of the net proceeds to the owner. The fact that innocent heirs are subject to this agreement is beyond the pale.

48. Going back to the "New Agent Orientation: HBA Listing" presentation, Exhibit 2, pp. 117-123, the process for ultimately



determining the commission MV realty is entitled to is likely to harm homeowners. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] This practice limits the commission split for cooperating brokers involved in the sale, which can make it more difficult for a seller to find a buyer.

49. On the next page of the “New Agent Orientation: HBA Listing” presentation, Exhibit 2, p. 121, there is a description [REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] In other words. MV is going to get their pound of flesh, and if the seller really wants to sell, he or she must take another financial hit so other brokers will show the listing.

50. On the next slide, Exhibit 2, p. 122, there is a quotation from paragraph 8(a) of the HBA using this scenario to explain the compensation the seller will be obligated to pay to MV Realty in the event of MV listing the property and a sale eventually occurring which says:

[REDACTED]





This is a guarantee that MV will get the most possible out of each transaction and never have to negotiate a commission, which is an everyday practice in the real estate market that consumers expect and benefit from.

51. Another way in which MV Realty's business harms consumers is illustrated by the Declaration of Vivian Lopez, who entered into an HBA with MV realty on May 6, 2022, in exchange for a payment of \$1,445. Exhibit 2, pp. 361-379. She states that she later wanted to sell her home and contacted MV to list the property and was surprised to have an agent other than the agent who she worked with before signing the HBA, and who she describes as being young and inexperienced. The home was listed under a 6-month listing agreement. Ms. Lopez indicates that after six weeks of inactivity with no offers the listing agent Brenda suggested that Ms. Lopez lower the price and agreed to hold an open house which was conducted by two young people, according to Ms. Lopez, and she was not sure that they were even licensed. After six months there still were no offers, and



this was during the height of the most aggressive seller's market that has ever been seen in my lifetime.

52. Ms. Lopez listed the house with another Realtor® in February of 2023 and shortly thereafter received a letter from MV advising her that if she sells through another realtor she would be in breach of contract. Ms. Lopez states that market conditions had declined between May of 2022 and February of 2023, coinciding with an increase in interest rates by the Federal Reserve, and she had to lower the listing price below what MV had listed the home for. The new brokerage procured a buyer and MV Realty demanded 3% of the sales price or fair market value of the home in order to release the memorandum (cloud) they had placed on the property, in addition to what she must pay the new broker. Ms. Lopez's experience shows that MV Realty relies on its HBA to extract money from consumers even when it provides poor service. Traditional real estate professionals are incentivized to provide high quality service because they will not be paid otherwise. MV Realty's HBA removes this incentive.

53. A major difference in the practices of MV Realty is in the process of selling and obtaining a signature on the agreement. Based on the New Agent Orientation training materials, it is obvious that the



[REDACTED]

[REDACTED]

[REDACTED]. In the “New Agent Orientation: Managing your offer” presentation there is a slide titled “Order & Flow of the Offer” in which a box says [REDACTED]

[REDACTED] Exhibit 2, p. 4.

On the “[REDACTED]” slide, Exhibit 2, p. 12, it again says “[REDACTED]  
[REDACTED]” and finally the “[REDACTED]  
[REDACTED]” slide [REDACTED] says “[REDACTED]

[REDACTED] Exhibit 2, p. 15. So clearly it is the [REDACTED]  
[REDACTED]. Considering the requirement in the “Agent Expectations”, the agents for MV must [REDACTED]

[REDACTED]. Without a knowledgeable real estate professional physically present to review a complex document like the HBA, it is more likely that consumers will misunderstand the terms of the contract.



54. In reviewing Declarations provided by the Office of the Attorney General it is clear that in many cases no agent is physically present at signing of an HBA agreement, only the notary is in the home, and the notary is not prepared to explain the contents of the HBA. In addition, in many of the Declarations I have reviewed the notary has failed to leave a copy of any of the documents signed with the homeowner and in some cases the homeowner either did not receive a copy afterword or it was from a week to many weeks before the HBA was sent to them. Homeowners generally trust their real estate professionals to act in their interests and to present them with all required information. However, MV Realty's licensees are incentivized to omit the onerous terms of the HBA that are often not in homeowners' interests because they are paid based on the number of HBAs they can convince consumers to sign. MV Realty's HBA sales requirements for realtors and compensation structure make it less likely that a realtor will adequately counsel homeowners regarding the HBA or put in the time to properly market homes. The Declarations the Attorney General has obtained illustrate how MV's practices are harmful to homeowners.



55. The 1/29/23 Declaration of Dominique Butler, a former Transfer Specialist for MV Realty is very informative regarding the practices of the company. Exhibit 2, pp. 195-234. The Transfer Specialists make outbound calls to “leads” MV Realty has acquired and make a sales pitch to homeowners. They are to tell homeowners that MV Realty is offering money for the opportunity to list and sell the home in the future. They are instructed to introduce themselves as representing MV and NOT MV Realty. If there was no answer, then the Transfer Specialist uses the automatic phone system to leave a prerecorded voice mail. The Transfer Specialists are empowered to pick the phone number they are calling from and were instructed to pick a phone number from the area code of the number being called. Ms. Butler stated that she found that the people she was calling were generally not expecting to hear from MV Realty. If the person Ms. Butler contacted on the phone showed interest in the program Ms. Butler then transferred the homeowner to a Realtor®. The Transfer Specialists are prohibited from providing the homeowner any written materials, including a copy of the HBA Contract. Ms. Butler stated that many of her leads were elderly and that one man who received an advertisement text message was excited to learn that he had won a



\$5,000 prize from MV Realty. In the last paragraph of Ms. Butlers Declaration she states: “I believe that transfer specialists were prohibited from obtaining or sharing information about the HBA to lure more leads into this bait-and-switch offer.” MV Realty’s marketing efforts through Transfer Specialists, in conjunction with the practices and incentives of the company’s Realtors®, make it likely that potential customers receive inadequate information and will misunderstand the terms of the HBA.

56. The 12/23/22 Declaration of Joseph S Karp, an elder law attorney is very descriptive of abuse of an elderly person. Exhibit 2, pp. 265-284. Mr. Karp was the attorney for 20 years for Ms. Dorothy Sayah prior to her passing. Mr. Karp was Ms. Sayah’s Attorney-in-Fact and was the successor trustee under her trust and stated that he was very upset that she was “roped into this scam.” According to Mr. Karp, in January 2021 Ms. Sayah had already been diagnosed with significant cognitive impairment presumed to be Alzheimer’s Disease. He had been advised by neighbors that it was time to seek guardianship of Ms. Sayah.

57. According to Mr. Karp, Ms. Sayah was a wealthy 82-year-old woman who had no need for money, much less \$800. At some



point Mr. Karp found that on January 16, 2021, Ms. Sayah had signed a Homeowners Benefit Agreement with MV Realty and agreed to a 40-year Memorandum being placed on her home. Mr. Karp had no knowledge of how the MV Realty HBA came to be signed by Ms. Sayah. Mr. Karp, through research found that the Memorandum had been recorded in the St. Lucie County property records on February 3, 2021. Nine weeks after Ms. Sayah signed the HBA the Court entered an order of plenary guardianship of Ms. Sayah. Mr. Karp had to hire an attorney to represent Ms. Sayah in order to get the HBA terminated. After much back and forth a complaint was filed with the Office of The Attorney General. It was only after filing the complaint that the Agreement was terminated and the cloud on the title to Ms. Sayah's property was lifted.

58. On January 19, 2023, Ms. Patricia Martz signed a Declaration provided to me by the Attorney General. Exhibit 2, pp. 285-290. Ms. Martz is a registered Florida Professional Guardian and Deborah Jean Freeman is her ward and has been incapacitated since 2018 and no longer has the right to legally contract in her own name. On February 9, 2022, Ms. Freeman signed a Memorandum of Homeowner Benefit Agreement with MV Realty PBC, LLC.



59. Ms. Martz discovered on March 3, 2022, that Ms. Freeman received \$900 from MV Realty in an account which she opened at the same financial institution which holds the guardianship account controlled by Ms. Martz. Ms. Martz had the bank close the new account and transfer the \$900 into the guardianship account. When Ms. Martz contacted MV Realty to explain that Ms. Freeman lacked the right to legally to contract the employee at MV Realty would not discuss the purported transaction with her ward, Ms. Freeman, and abruptly hung up on Ms. Martz.

60. On or about March 7, 2022, the attorney who represents Ms. Martz as the guardian of Ms. Freeman sent a letter to Amanda Zachman regarding the transaction with Ms. Freeman. As of the date of the Declaration of Ms. Martz, there had been no response to the letter. It is Ms. Martz's belief that MV Realty first reached Ms. Freeman through a telemarketing phone call, as Ms. Freeman is in the habit of answering calls from unknown numbers, including scam phone calls. Ms. Martz believes that "MV Realty improperly took advantage of an incapacitated senior citizen in its transaction with Ms. Freeman. As a result of MV Realty's actions, Ms. Freeman has incurred expensed due to this scam and will incur further guardianship



and legal expensed required to remove the Memorandum of Homeowner Benefit Agreement which is currently encumbering her home.

61. On January 20, 2023 Pamela Sokol signed a Declaration that the Attorney General provided to me. Exhibit 2, pp. 342-360. Sometime in January 2019, Ms. Sokol indicated that she saw an advertisement for MV Realty on Facebook. She clicked on the ad and filled out a form with her information including phone number. She began receiving calls from MV Realty advertising their Homeowner Benefit Program. She heard a pitch that MV would give her up to \$5,000 in exchange for agreeing to let MV Realty be her real estate agent if she decided to sell her home. Ms. Sokol did not need the money and was not interested in the HBA program. MV Realty continued to contact her through phone calls and ads left in her mailbox. On February 13, 2019, a notary named Janet Vizcaino showed up at her home unannounced and told her she was in the area and wanted to know if she would consider MV Realty's Homeowner Benefit Program. The notary contacted a Realtor®, TJ Prystal, who offered her \$825 to sign the HBA agreement and \$300 if she referred others to MV. She received a check from MV in the amount of \$1,125



but did not receive a copy of the Agreement. Ms. Sokol had to contact MV Realty to request a copy of the Agreement she had signed. At the time Ms. Sokol signed the Agreement she was not given time to fully review the contracts while the notary was at her home. She states that no one explained at any time that the HBA had a 40-year term, that it would prevent her from getting a reverse mortgage or that she would have to pay 3% of the value of her home to get out of the agreement.

62. In December of 2022 Ms. Sokol needed to get some of her equity out of her home and began to research the possibility of getting a reverse mortgage and found that because MV Realty had recorded a Memorandum of Homeowner Benefit Agreement in the public records of Miami-Dade County she could not get a reverse mortgage. When she contacted MV Realty she was advised that there was no way for her to get a reverse mortgage but that they would work with her to refinance her property and referred her to a mortgage broker. She was not comfortable working with this person as he was not helpful, so she had no further dealings with him. The only other option Ms. Sokol has is to pay MV Realty 3% of the value of her home in order to terminate the agreement which would obviously have to come out of the proceeds of a refinance of the property. Ms. Sokol finally stated,



“I feel that MV Realty took advantage of me and was not honest with me about the Homeowner Benefit Agreement.”

63. Based on my review of consumers’ interactions with MV Realty, the company’s training procedures for Realtors®, and my experience in the real estate industry, there is a pattern of deceit and a habit of preying on seniors by MV Realty in marketing this program. MV Realty’s realtors have minimal personal interactions with MV Realty customers and may not even realize that a senior lacks capacity to sign an HBA or that it is not in their best interest. Furthermore, MV Realty’s realtors are incentivized and required to sign customers up for HBAs instead of doing the hard work required to sell houses at the best price, which is likely to harm seniors, and other consumers who need to access their home equity.

64. Real Estate Sales normally requires an extensive amount of work by a real estate agent. The agent must work hard to develop the trust of the customer. MV Realty’s business model does not incentivize MV Realty’s agents to do the hard work of being a real estate agent because MV Realty will get paid the very next time that the customer needs to access his or her home equity. MV Realty’s



business model allows them to sit back and harvest early termination fees rather than do the work to make the sales.

65. MV Realty's business model is different from regular real estate brokerages in that MV Realty uses Memoranda filed in the public records to coerce a payment from a homeowner. In the Florida real estate industry, it is extremely uncommon for a real estate agent to record a lien to collect a commission, and in fact it is illegal under § 475.42(1)(i), Florida Statutes, without the seller's express permission. It does happen on occasion, but it is not a standard practice.

66. MV Realty is different from other real estate brokerages because MV Realty is far more likely to sue its customers than regular real estate brokerages. MV Realty locks up the equity in a consumer's home so that they can't access it without paying MV Realty. This is not at its core real estate services and it does not serve the public. The way that the Homeowner Benefit Program is sold, together with the way that MV Realty's agents are trained, and MV Realty's practice of filing liens on customers' homes, and the likelihood that the customer and MV Realty will be adverse to one another, rather than cooperating



together to achieve a real estate sale, all show that MV Realty is not a real estate brokerage that acts in the best interest of consumers.

Under penalties of perjury, I declare that I have read the foregoing Declaration and that the facts stated in it are true.



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Richard T. Fryer

Date: August 22, 2023