

**BEFORE THE IOWA REAL ESTATE COMMISSION  
1920 SE HULSIZER  
ANKENY, IOWA**

**IN RE:**

**JOHN W. HERRIG**  
Broker (B04656)

**JOHN HERRIG REALTY**  
13750 SURREY LANE  
DUBUQUE, IA 52002

**CASE NUMBER: 04-012**

**STIPULATION  
AND  
ORDER**

On this 16<sup>th</sup> day of SEPTEMBER, 2004, the Iowa Real Estate Commission and **JOHN W. HERRIG**, each hereby agree with the other and stipulate as follows:

1. The allegations specified in the Statement of Charges in this case shall be resolved without proceeding to hearing, as the parties have agreed to the following Stipulation and Consent Order.

2. The Respondent has a right to a hearing on the charges, but waives the right to hearing and all attendant rights, including the right to appeal, by freely and voluntarily agreeing to this Order. Once entered, this Order shall have the force and effect of a disciplinary order entered following a contested case hearing.

3. The Respondent was issued a real estate broker license on March 20, 1975, which is in full force and effect through December 31, 2005.

4. The Iowa Real Estate Commission has jurisdiction over the parties and subject matter jurisdiction over each allegation in the Statement of Charges.

5. A Statement of Charges will be filed against Respondent together with this voluntary Stipulation and Consent Order.

6. Respondent admits each and every allegation in the Statement of Charges.

7. If this Stipulation and Consent Order is approved by the Commission it will be filed, along with the Statement of Charges, and upon filing both documents will become public records.

8. This Stipulation and Consent Order shall be made a part of the record of the Respondent and may be considered by the Commission in determining the nature and severity of any disciplinary action to be imposed on the Respondent for any future violations of the laws and rules governing the practice of real estate.

9. Failure to comply with the terms of this Stipulation and Consent Order shall be prima facie evidence of a violation of Iowa Code sections 543B.29(3), 543B.34(2) and 272C.3(2)(a) (2003).

10. This Stipulation and Consent Order shall be presented to the Commission in closed session by the prosecuting attorney and/or Commission staff. Respondent waives any right of notice of this meeting or any right which the Respondent might have to participate in the discussion of this Stipulation and Consent Order among the Commission, the Commission staff and the prosecuting attorney.

11. This Stipulation and Consent Order is not binding on the Iowa Real Estate Commission until it has been formally approved by a majority of the Commission members. In the event that this Stipulation and Consent Order is rejected by the Commission it shall be of no force or effect to either party.

THEREFORE IT IS ORDERED that the Respondent is **Reprimanded**.

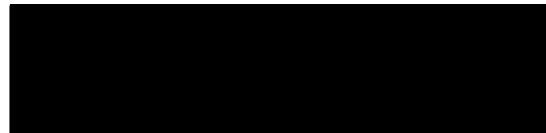
IT IS FURTHER ORDERED that the Respondent shall personally attend the Commission approved eight (8) hour broker pre-license education course: "Iowa Real Estate Trust Accounts." These hours shall be in addition to any real estate continuing education required by law for license renewal. The original certificate of attendance must be submitted to the Iowa Real Estate Commission within thirteen (13) months of the signing of this agreement by the Commission and must come under a cover letter addressed to the Commission's Executive Officer and refer to case 04-012.

IT IS FURTHER ORDERED that the Respondent shall pay a civil penalty in the amount of \$ 500 within thirty (30) days of acceptance of this Stipulation and Consent Order by the Commission and come under a cover letter addressed to the Commission's Executive Officer and refer to case 04-012

IT IS FURTHER ORDERED AND AGREED that at all future times Respondent shall fully and promptly comply with all pertinent Orders of the Commission and the statutes and Commission rules regulating the practice of real estate.

**FOR THE RESPONDENT:**

This Stipulation and Consent Order is voluntarily entered into by **JOHN W. HERRIG** on this 24<sup>th</sup> day of August, 2004.



**JOHN W. HERRIG**, Respondent

State of Iowa

County of Dubuque

Signed and sworn to before me on this 25<sup>th</sup> day of August, 2004, by



Notary Public, State of Iowa

Printed Name: Jodee A. Theisen

My Commission Expires: 7/20/07



**FOR THE COMMISSION:**

This Stipulation and Consent Order is accepted by the Iowa Real Estate Commission on this 16<sup>th</sup> day of SEPTEMBER, 2004.



**James E. Hughes**, Chair  
Iowa Real Estate Commission

**BEFORE THE IOWA REAL ESTATE COMMISSION  
1920 SE HULSIZER  
ANKENY, IOWA**

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<b>IN RE:</b>	)	
	)	
	)	<b>CASE NUMBER: 04-012</b>
<b>JOHN W. HERRIG</b>	)	
<b>Broker (B04656)</b>	)	<b>STATEMENT</b>
	)	<b>OF</b>
<b>John Herrig Realty</b>	)	<b>CHARGES</b>
<b>13750 SURREY LANE</b>	)	
<b>DUBUQUE, IA 52002</b>	)	

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The Iowa Real Estate Commission has jurisdiction of this matter pursuant to Iowa Code chapters 17A, 543B, and 272C (2003).

Licenses issued by the Commission are subject to the laws of the state of Iowa and to the administrative rules of the Commission.

**JOHN W. HERRIG** was at all material times, during the following events, a licensed Sole-Proprietor Broker in Dubuque, Iowa. His license, number B04656 was issued March 20, 1975 and is in full force and effect through December 31, 2005.

**COUNT I**

The Respondent is charged with engaging in practices harmful or detrimental to the public by 1) withholding a portion of the earnest money deposit to pay abstracting expenses authorized by Respondent without the informed written consent of the parties, or buyer's knowledge, and 2) by releasing the remaining earnest money to the buyer without the informed written consent of the parties, or buyer's prior knowledge, in violation of Iowa Code sections 543B.29(3) (practice harmful or detrimental to the public), 543B.34(8), 543B.56(1)(b) (2003), and Iowa administrative Code Chapter 193E, sections 12.5(1)(b), 13.1(7), 13.1(10), and 18.14(5)(f)(2) & (3), 18.14(5)(j) and 18.14(5)(s).


### CIRCUMSTANCES OF THE COMPLAINT

1. On or about September 13, 2003, Respondent listed the property located at 466 East 12<sup>th</sup> Street, Dubuque, Iowa, Edward G. Brown, seller, for \$ 112,600.
2. On or about October 27, 2003, Respondent acting as dual agent, prepared a cash offer on behalf of Brian D. Kohn for \$100,000, with \$1000 earnest money, that was accepted. Respondent authorized updating the abstracting for the property.
3. On or about November 6, 2003, Respondent received communication from Kohn's attorney withdrawing as counsel and relating to concerns about property lines and environmental pollution. Kohn then advised Respondent he wanted to rescind the contract and requested return of the earnest money deposit.
4. On or about January 7, 2004, without written agreement of the parties, or the buyer's knowledge, Respondent wrote check number 3151 on the trust account payable to Dubuque County Abstract & Title for \$375.00 for updating the abstract on the Edward G. Brown property, and check number 3176 on the trust account payable to Brian Kohn for \$625 for refund of remaining earnest money.

### FINDING OF PROBABLE CAUSE

On June 17, 2004 the Iowa Real Estate Commission found probable cause to file this Statement of Charges and to order that a hearing be set in this case.

Executed this 16<sup>th</sup> day of SEPTEMBER, 2004.

  
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Roger L. Hansen, Executive Officer  
Iowa Real Estate Commission