

**FILED** June 29, 2017 (Date)  
I.R.E.C.  
Board / Commission  
[Signature]  
Signature, Executive Officer

BEFORE THE IOWA REAL ESTATE COMMISSION  
200 EAST GRAND, SUITE 350  
DES MOINES, IOWA 50309

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|                       |   |                            |
|-----------------------|---|----------------------------|
| IN RE:                | ) |                            |
|                       | ) | CASE NUMBER: 16-330        |
| Rachel Cheeney        | ) |                            |
| Broker (B44435000)    | ) |                            |
|                       | ) |                            |
| 2510 Leverage Road    | ) | ORDER TO REINSTATE LICENSE |
| Cedar Falls, IA 50613 | ) |                            |
|                       | ) |                            |
| RESPONDENT            | ) |                            |

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NOW on this 29<sup>th</sup> day of June 2017, this matter comes before the undersigned Executive Office on behalf of the Iowa Real Estate Commission [Commission]. The Executive Officer finds as follows:

1. Respondent Rachel Cheeney's real estate broker license was suspended indefinitely by the Commission on April 3, 2017 pursuant to the terms of a settlement agreement entered between the parties in this docket on February 2, 2017.
2. Paragraph #14 of the February 2, 2017 settlement agreement conditioned reinstatement of the Respondent's real estate broker license upon the Respondent's payment of a \$5,000 civil penalty, the Respondent's completion of the eight hour education course "Real Estate Trust Accounts," and the Respondent's submission of a CPA audit report demonstrating her current compliance with Iowa law and Commission trust account rules.
3. On June 28, 2017, the Respondent presented to the Executive Officer proof that she has completed or otherwise fulfilled all conditions required of her by paragraph #14 of the February 2, 2017 settlement agreement for reinstatement of her real estate broker license
4. The Respondent is now eligible for reinstatement of her suspended real estate broker license and no cause is found at this time to continue the indefinite suspension previously ordered.

IREC Case No. 16-330  
Rachel Cheeney

**IT IS THEREFORE ORDERED** that Respondent's Iowa real estate broker license is hereby reinstated to full force and effect. Respondent shall maintain compliance with all other terms of the February 2, 2017 settlement agreement.

Dated this 29<sup>th</sup> day of June 2017.

  
\_\_\_\_\_  
Jeffrey M. Evans, Executive Officer  
Iowa Real Estate Commission

**FILED** February 2, 2017 (Date)  
IAREC  
Board / Commission  
Signature, Executive Officer

**BEFORE THE IOWA REAL ESTATE COMMISSION  
200 EAST GRAND, SUITE 350  
DES MOINES, IOWA 50309**

|                        |   |                                     |
|------------------------|---|-------------------------------------|
| <b>IN RE:</b>          | ) |                                     |
|                        | ) | <b>CASE NUMBER: 16-330</b>          |
| Rachel Cheeney         | ) |                                     |
| Broker (B44435000)     | ) | <b>INFORMAL SETTLEMENT</b>          |
|                        | ) | <b>AGREEMENT AND CONSENT</b>        |
| Pro Resource Group LLC | ) | <b>ORDER IN A DISCIPLINARY CASE</b> |
| 2510 Leverage Road     | ) |                                     |
| Cedar Falls, IA 50613  | ) |                                     |
|                        | ) |                                     |
| <b>RESPONDENT</b>      | ) |                                     |

The Iowa Real Estate Commission (Commission) and **Rachel Cheeney** (Respondent) enter into this Informal Settlement Agreement and Consent Order in a Disciplinary Case (Order) pursuant to Iowa Code Sections 17A.10(1) and 272C.3(4) (2016).

1. The Commission issued Rachel Cheeney real estate broker license number B44435000 on July 12, 2006. Respondent's license is in full force and effect until December 31, 2017. At all times relevant to this matter, the Respondent was a licensed real estate broker officer, assigned to Pro Resource Group, LLC, license number F05698000, located in Cedar Falls, Iowa.

2. The Commission has jurisdiction of this disciplinary matter pursuant to Iowa Code chapters 17A, 272C, and 543B (2016). Licenses issued by the Commission are subject to the laws of the State of Iowa and to the administrative rules of the Commission.

**SETTLEMENT AGREEMENT**

3. On December 27, 2016, the Commission issued a Statement of Charges against the Respondent. A true and accurate copy of said Statement of Charges is attached to this Order as Exhibit 1. Without admission of wrongdoing or guilt, the Respondent does not contest the allegations recited in the attached Statement of Charges. This case shall constitute two violations for purposes of Iowa Code section 543B.29(4) (2016).

4. The Respondent acknowledges that she has a right to a hearing before the Commission on the merits of the charges. By freely and voluntarily entering into this Order, the Respondent waives her right to a hearing and all attendant rights, including the right to seek judicial review. This Order constitutes the final agency order in this contested case pursuant to Iowa Code section 17A.10 and 193 Iowa Administrative Code 7.

In re: Rachel Cheeney; IREC Case No. 16-330  
Informal Settlement Agreement and Consent Order  
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5. The Respondent agrees that the State's attorney and/or Commission staff may present this Order to the Commission and may have ex parte communications with the Commission while presenting it. Respondent waives any right of notice of this meeting or any right that the Respondent might have to participate in the discussion of this Order among the Commission, the Commission staff and the State's attorney.

6. The Respondent shall at all future times fully and promptly comply with all pertinent Orders of the Commission and the statutes and Commission rules regulating the practice of real estate. This Order shall be part of the permanent record of the Respondent and shall be considered by the Commission in determining the nature and severity of any future disciplinary action to be imposed in the event of any future violations of the laws and rules governing the practice of real estate by the Respondent.

7. Failure to comply with the terms of this Order shall be prima facie evidence of a violation of Iowa Code sections 543B.29(1)(d), 543B.34(1) and 272C.3(2)(a) (2016) and shall be grounds for further disciplinary action. However, no action may be taken against the Respondent for violations of this Order without a hearing, or waiver of hearing.

8. This Order is not binding on the Commission until it has been formally approved by a majority of the Commission members.

(a) In the event that this Order is rejected by the Commission it shall be of no force or effect to either party and it shall not be admissible for any purpose in further proceedings in this matter.

(b) If the Commission approves this Order, it shall fully dispose of all issues in this case.

9. Upon acceptance by both the Commission and Respondent, this Informal Settlement Agreement and Consent Order shall be a public record available for inspection and copying in its entirety in accordance with the requirements of Iowa Code chapter 22 {2016}.

### CONSENT ORDER

#### **IT IS THEREFORE ORDERED:**

10. REPRIMAND. Pursuant to 193E Iowa Administrative Code section 18.14(1)(j), the Respondent is reprimanded.

In re: Rachel Cheeney; IREC Case No. 16-330  
Informal Settlement Agreement and Consent Order  
Page 3 of 4

11. CIVIL PENALTY. Respondent shall pay a civil penalty to the Commission in the amount of five thousand dollars (\$5,000.00) on or before April 3, 2017. The civil penalty must come under a cover letter addressed to the Commission's Executive Officer, referencing Case Number 16-330.

12. EDUCATION. The Respondent shall attend the Commission approved eight (8) hour course "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 shall be submitted to the Iowa Real Estate Commission on or before April 3, 2017. The certificate of attendance must come under a cover letter addressed to the Commission's Executive Officer, referencing Case Number 16-330.

13. CPA AUDIT. The Respondent shall hire an Iowa licensed Certified Public Accountant (CPA) at the Respondent's expense to audit and to establish trust account records following Generally Accepted Accounting Principles. The CPA's audit report demonstrating Respondent's current compliance with applicable standards, Iowa law and Commission trust account rules shall be submitted to the Iowa Real Estate Commission on or before April 3, 2017. The audit report must come under a cover letter addressed to the Commission's Executive Officer, referencing Case Number 16-330.

14. SUSPENSION. The Respondent's real estate broker license shall be suspended indefinitely commencing on April 3, 2017, pending submission of the civil penalty, proof of completion of the education, and compliant CPA Audit report required by Paragraphs 11 – 13 of this informal settlement agreement entered between the Respondent and the Commission. Upon the Respondent's submission of the civil penalty, education, and compliant CPA audit report to the Commission's Executive Officer, the Respondent's real estate broker license shall be reinstated upon order of the Commission's Executive Officer. Should the Respondent submit the full amount of the civil penalty, a course completion certificate for the 8 hour course "Trust Accounts", and a compliant CPA audit report to the Commission's Executive Officer at the Commission's offices prior to 1:00 PM on April 3, 2017, the suspension provided for in this paragraph shall not be imposed.

15. FUTURE COMPLIANCE. The Respondent shall at all future times fully and promptly comply with all pertinent Orders of the Commission and the statutes and Commission rules regulating the practice of real estate.



In re: Rachel Cheeny; IREC Case No. 16-330  
Informal Settlement Agreement and Consent Order  
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WHEREFORE, the terms of this Informal Settlement Agreement and Consent Order is agreed to by the Iowa Real Estate Commission and the Respondent.

FOR THE RESPONDENT:

Voluntarily agreed to and accepted by Rachel Cheeny on this 26<sup>th</sup> day of January, 2017.

Rachel Cheeny  
By: RACHEL CHEENEY, Respondent

State of Iowa  
County of Blackhawk

Signed and sworn to before me on this 26 day of January, 2017, by:



Barbara Jo Hunt  
Notary Public, State of Iowa  
Printed Name: Barbara Jo Hunt  
My Commission Expires: Nov 26 2017

FOR THE COMMISSION:

Voluntarily agreed to and accepted by the IOWA REAL ESTATE COMMISSION on this 2ND day of FEBRUARY, 2017.

Terrance M. Duggan  
TERRANCE M. DUGGAN, Chair  
Iowa Real Estate Commission

FILED December 27, 2016 (Date)

J.R.C.  
Board / Commission  
[Signature]  
Executive Officer

BEFORE THE IOWA REAL ESTATE COMMISSION  
200 EAST GRAND, SUITE 350  
DES MOINES, IOWA 50309

|                        |   |                       |
|------------------------|---|-----------------------|
| IN RE:                 | ) |                       |
|                        | ) | CASE NUMBER: 16-330   |
| Rachel Cheeney         | ) |                       |
| Broker (B44435000)     | ) | NOTICE OF HEARING AND |
|                        | ) | STATEMENT OF CHARGES  |
| Pro Resource Group LLC | ) |                       |
| 2510 Leverage Road     | ) |                       |
| Cedar Falls, IA 50613  | ) |                       |
|                        | ) |                       |
| RESPONDENT             | ) |                       |

The Iowa Real Estate Commission ("Commission") issues this Notice of Hearing pursuant to Iowa Code Section 17A.12(2). The Commission has jurisdiction of this matter pursuant to Iowa Code chapters 17A, 543B and 272C (2016). Licenses issued by the Commission are subject to the laws of the State of Iowa and to the administrative rules of the Commission.

The Commission issued Rachel Cheeney ("Respondent") real estate broker license number B44435000 on July 12, 2006. Respondent's license is in full force and effect until December 31, 2017. At all times relevant to this matter, the Respondent was a licensed real estate broker officer, assigned to Pro Resource Group, LLC, license number F05698000, located in Cedar Falls, Iowa.

**NOTICE OF HEARING**

- HEARING.** A contested case hearing will be held concerning the below-stated disciplinary charges before the Iowa Real Estate Commission on the 2<sup>nd</sup> day of February, 2017 at 1:30 o'clock PM, at 200 East Grand, Suite 350, Des Moines, Iowa.
- ACKNOWLEDGMENT.** The Commission requests that you file a statement to acknowledge receipt of the notice of hearing within 10 days of the date you are served with this Notice.
- ANSWER.** Within 20 days of the date you are served with this Notice you must file an answer to the charges as provided in 193 Iowa Administrative Code 7.9.

**EXHIBIT 1**

4. **PREHEARING CONFERENCE.** A prehearing conference will be held by telephone on the 26<sup>th</sup> day of January, 2017 at 9:00 o'clock AM before an Administrative Law Judge from the Iowa Department of Inspections and Appeals ("ALJ"). You are responsible for notifying the Commission office of the telephone number at which you or your counsel can be reached. Commission rules on prehearing conferences may be found at 193 Iowa Administrative Code 7.21.

5. **PRESIDING OFFICER.** The full Commission shall serve as presiding officer at hearing, pursuant to Iowa Code section 272C.6(1) and 193 Iowa Administrative Code 7.10(1). The Commission may request that an ALJ make initial rulings on prehearing matters, and be present to assist and advise the Board at hearing, as described in 193 Iowa Administrative Code 7.10(4).

6. **HEARING PROCEDURES.** Commission rules on hearing procedures may be found at 193 Iowa Administrative Code chapter 7. You have the right to respond to the charges, produce evidence on your behalf, cross-examine witnesses, and examine any documents introduced at hearing. You may appear personally and be represented by counsel at your own expense. Consult rule 193 Iowa Administrative Code 7.22 if you need to request an alternative time or date. The hearing may be open to the public or closed to the public at the discretion of the Respondent.

7. **DEFAULT.** If you fail to appear at hearing, the Commission may enter a default decision or proceed with the hearing and render a decision in your absence, in accordance with Iowa Code section 17A.12(3) and 193 Iowa Administrative Code 7.27.

8. **STATE'S COUNSEL.** Licensee disciplinary cases are prosecuted by an Assistant Attorney General acting on behalf of the public interest (the State). Copies of all pleadings shall be filed with the Commission, with copies mailed to:

John R. Lundquist  
Assistant Attorney General  
Iowa Department of Justice  
2<sup>nd</sup> Floor, Hoover State Office Building  
Des Moines, Iowa 50319

Phone: 515-281-3658  
Fax: 515-281-4209  
John.Lundquist@iowa.gov



9. **RESPONDENT'S COUNSEL.** Copies of all pleadings filed with the Commission shall also be provided to Respondent's counsel of record:

NONE

10. **SETTLEMENT.** The procedural rules governing the Commission's settlement process are found at 193 Iowa Administrative Code 7.42. If you are interested in pursuing settlement of this matter, please contact Assistant Attorney General John R. Lundquist.

11. **COMMUNICATIONS.** You may not contact Commission members by phone, letter, facsimile, e-mail, or in person about this Notice of Hearing and Statement of Charges. Commission members may only receive information about the case when all parties have notice and an opportunity to participate, such as at the hearing or in pleadings you file with the Commission office and serve upon all parties in the case. You should direct any questions to Assistant Attorney General John R. Lundquist at 515-281-3658, or the Commission's Executive Officer at 515-725-9026, or Fax 515-725-9032.

#### STATEMENT OF CHARGES

##### COUNT I

12. Respondent is charged with failing to fully cooperate with a licensee disciplinary investigation and/or failing to timely provide information requested by the Commission relative to a complaint investigation in violation of Iowa Code §§ 543B.34(1)(j), 543B.46(3), 543B.46(6), 543B.46(7). See 193E Iowa Administrative Code §§ 13.5, 18.2(7), 18.14(5)(i).

##### CIRCUMSTANCES

13. Respondent was assigned as the designated broker of the real estate brokerage firm at all times relevant to this matter. As a broker officer of the real estate brokerage firm and designated broker, the Respondent is responsible for ensuring compliance with all applicable rules and regulations governing its operations in the state of Iowa.

14. On October 12, 2016 and October 17, 2016 the Commission auditor ("auditor") left two voicemail messages for the Respondent, attempting to schedule an examination of her Iowa real estate trust account and real estate transaction records. On October 13, 2016 an e-mail request was sent by the auditor, asking for trust account records so an offsite trust account examination could be conducted.

15. On October 26, 2016 a complaint file was opened by the Commission and correspondence was sent from the Commission investigator to the Respondent via certified mail, asking the Respondent to address the allegations that she has repeatedly failed to respond to the auditor's request to perform a trust account examination for her real estate brokerage firm. USPS records indicate that the item was delivered on October 28, 2016 at 11:35 a.m.

16. On November 11, 2016 the Respondent left a voicemail for the auditor and they spoke on November 14, 2016; scheduling a trust account examination for November 16, 2016.

#### COUNT II

17. Respondent is charged with engaging in practices harmful or detrimental to the public in violation of Iowa Code sections 543B.29(1)(d), 543B.29(1)(k), 543B.34(1), 543B.46 (2016) by:

- (a) Failing to maintain at all times a record of the Respondent's trust account and improper trust account procedures. *See* 193E Iowa Administrative Code §§ 13.1(6), 18.14(5)(e), 18.14(5)(f).
- (b) Failing to accurately maintain a general ledger to record in chronological order all receipts and disbursements for the Respondent's trust account. *See* 193E Iowa Administrative Code §§ 13.1(6)(a), 18.14(5)(e)(1).
- (c) Failing to accurately maintain the running balance of all individual ledger accounts for the Respondent's trust account. *See* 193E Iowa Administrative Code §§ 13.1(6)(b), 18.14(5)(e)(2).
- (d) Failing to provide a means for a monthly reconciliation of the Respondent's trust account to ensure agreement of the general ledger balance, reconciled bank balance and individual ledger accounts. *See* 193E Iowa Administrative Code §§ 13.1(6)(a)(3), 18.14(5)(e), 18.14(5)(f).

#### COUNT III

18. Respondent is charged with failing to comply with the trust account requirements in violation of Iowa Code sections 543B.29(1)(k), 543B.34(1), 543B.46(1) (2016) by failing to remit interest earned on the trust account on a calendar quarter basis to the State of Iowa. *See* 193E Iowa Administrative Code sections 13.1(2), 18.14(5)(e)(11).

#### CIRCUMSTANCES

19. On or about November 16, 2016, an onsite examination of the Respondent's Iowa real trust account and transaction records was conducted by the Commission auditor.

20. The auditor found that the Respondent is failing to properly maintain accurate accounting of the general ledger balance for the Respondent's Iowa real estate trust account.

21. The auditor found that for the Respondent's Iowa real estate trust account, there is a failure to properly maintain accurate accounting for its individual ledger accounts.

22. The auditor found that for the Respondent's Iowa real estate trust account, there was not an accurate monthly reconciliation being performed to ensure agreement of the general ledger balance, reconciled bank balance and sum of the individual ledgers.

23. For the bank statement dated October 31, 2016, the auditor was not able to perform an accurate reconciliation due to the Respondent's failure to maintain the general ledger, failure to maintain the individual ledgers and failure to perform accurate monthly reconciliations for the Iowa real estate trust account.

24. The auditor found that the Respondent is failing to remit interest earned on the trust account on a calendar quarter basis to the State of Iowa.

25. In April 2011, the Respondent and the Commission entered into an Informal Settlement Agreement for her failure to comply with the trust account requirements under Iowa Code section 543B.46. See IREC Case No. A11-005.

#### COUNT IV

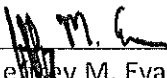
26. Respondent is charged with engaging in practices harmful or detrimental to the public in violation of Iowa Code sections 543B.29(1)(d), 543B.29(1)(k), 543B.34(1), 543B.46 (2016) by failing to properly effectuate the terms of an executed purchase agreement and/or failing to deposit trust funds in an Iowa real estate trust account. See 193E Iowa Administrative Code sections 13.1, 13.1(1), 18.14(5)(f)(10).

#### CIRCUMSTANCES

27. In a random sampling of transaction files, the Commission auditor discovered three (3) real estate transactions for properties located in northeast Iowa from 2014 – 2016 in which the executed purchase agreement provided that the earnest payment was to be held in trust by the listing broker, Pro Resource Group, LLC.

28. In reviewing the aforementioned real estate transaction files for the subject properties, along with the Respondent's trust account records, the auditor discovered that the earnest monies for the respective transactions were not deposited into the Respondent's Iowa real estate trust account. The Respondent failed to properly effectuate the terms of an executed purchase agreement and failed to deposit trust funds in an Iowa real estate trust account.

This Notice of Hearing and Statement of Charges is filed and issued on the 27<sup>th</sup> day of December, 2016.

  
\_\_\_\_\_  
Jeffrey M. Evans, Executive Officer  
Iowa Real Estate Commission

Copies to:  
Assistant Attorney General John Lundquist  
Department of Inspections and Appeals, assigned Administrative Law Judge