

FILED

August 7, 2018

(Date)

REC

Board / Commission

Signature, Executive Officer

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

IN RE:)	
	)	CASE NUMBER: 18-162
Kurt A. Pagliai)	
Broker (B27543000)	)	NOTICE OF HEARING AND
	)	STATEMENT OF CHARGES
BlackAcre Realty LLC)	
800 New York)	
Des Moines, IA 50313)	
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 (2018). 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 Kurt A. Pagliai ("Respondent") real estate broker license number B27543000 on June 18, 2013. Respondent's license is in full force and effect until December 31, 2018. At all times relevant to this matter, the Respondent served both as the designated broker in charge and a licensed real estate broker officer for BlackAcre Realty LLC, license number F05647000, located in Urbandale, Iowa.

NOTICE OF HEARING

1. **HEARING.** A contested case hearing will be held concerning the below-stated disciplinary charges before the Iowa Real Estate Commission on the 6th day of **September, 2018** at **1:30 o'clock PM**, at 200 East Grand, Suite 350, Des Moines, Iowa.

2. **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.

3. **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.

4. **PREHEARING CONFERENCE.** A prehearing conference will be held by telephone on the **30th day of August, 2018 at 10:00 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
2nd Floor, Hoover State Office Building
Des Moines, Iowa 50319

Phone: 515-281-3658
Fax: 515-281-4209
john.lundquist@ag.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.

12. **ADA NOTICE.** If you require the assistance of auxiliary aids or services to participate in this matter because of a disability, immediately call or e-mail the Commission's Executive Officer at 515-725-9026. If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942.

STATEMENT OF CHARGES

COUNT I

13. Respondent is charged with engaging in a practice harmful or detrimental to the public and/or being unworthy to act as a real estate broker in such manner as to safeguard the interests of the public by providing false or misleading verification of funds available to close a real estate transaction in violation of Iowa Code sections 543B.29(1)(d), 543B.29(3), 543B.34(1)(a), 543B.34(1)(h), and/or 543B.34(1)(k) (2018). See 193E Iowa Administrative Code §§ 18.2(1), 18.14(5)(s).

COUNT II

14. 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 section 543B.34(1)(j) (2018). See 193E Iowa Administrative Code §§ 18.2(7), 18.14(5)(i).

CIRCUMSTANCES

15. In March 2018, the Respondent, acting as a principal (buyer), sought to purchase a property located in Waukee, Iowa.

16. A purchase agreement for the subject property was executed on March 3, 2018 and the property was scheduled to close on April 2, 2018. At the Respondent's request, the closing was extended to May 4, 2018.

17. Towards the end of April, the Respondent asked the Sellers for a second extension of the closing date. Before agreeing to the second extension request, the Sellers sought verification from the Respondent that he had sufficient funds available to close on the transaction.

18. The Respondent subsequently provided the Sellers with correspondence dated April 23, 2018 and April 25, 2018 purportedly from a financial institution that represented that the Respondent had sufficient financial capacity from his own resources to purchase the subject property. The Sellers accepted the letters as evidence that the Respondent had sufficient funds available to close on the transaction and they agreed to extend the closing to May 29th.

19. On May 29, 2018, the company retained to facilitate the closing of the subject property reached out to the financial institution that purportedly provided the Respondent's verification letters to discuss the wiring of funds for closing. In response, the financial institution communicated that it had no knowledge of the transaction, wiring instructions, and any letters it allegedly prepared on behalf of the Respondent. The financial institution specifically denies that it produced or otherwise authorized the above-referenced correspondence dated April 23, 2018 and April 25, 2018 that the Respondent forwarded to the Sellers.

20. In the course of its investigation of this matter, Commission staff asked the Respondent for documents related to the subject property. The Respondent was further asked to address the allegations that he fabricated the verifications of funds documents and forged the signature of the representative of the financial institution.

21. United States Postal Service records indicate that a letter from Commission staff seeking the above-referenced information was delivered to the Respondent at 12:05 p.m. on July 11, 2018 in Des Moines, Iowa. Commission records also indicate that an e-mail dated July 9, 2018 and voicemails left for the Respondent on July 10, 2018, July 19, 2018, and July 31, 2018 each sought a response from the Respondent in furtherance of the investigation of this matter.

22. As of the date of this filing, the Respondent has not provided any response to the Commission's requests for documents and information.

NOTICE OF APPLICABILITY OF IOWA CODE SECTION 543B.29(4)

23. On April 6, 2017, the Commission approved an Informal Settlement Agreement and Consent Order with the Respondent through which he did not contest the violations charged in IREC Case No. 16-309. A true and accurate copy of this settlement agreement is attached as Exhibit 1 and its contents are incorporated herein.

24. In case number 16-309, the Respondent was charged with failing to make trust account records available for inspection by Commission staff in violation of Iowa Code sections 543B.34(1)(j), 543B.46(3), 543B.46(6), 543B.46(7) and engaging in practices harmful or detrimental to the public for multiple trust account infractions in violation of Iowa Code sections 543B.29(1)(d), 543B.29(1)(k), 543B.34(1), 543B.46. These violations occurred on or about September 27, 2016 and October 7, 2016, through an onsite examination of the Respondent's Iowa real estate trust account and transaction records by the Commission auditor.

25. The Iowa Code provides that: "A real estate broker's or salesperson's license shall be revoked following three violations of [Iowa Code section 543B.29] or [Iowa Code] section 543B.34 within a three-year period." Iowa Code § 543B.29(4) (2018). Should the above-stated charges in Count I and Count II be sustained by the Commission, it would constitute the second and third violations of Iowa Code section 543B.29 and/or Iowa Code section 543B.34 committed by the Respondent within a three-year period.

This Notice of Hearing and Statement of Charges is filed and issued on the 7th day of August, 2018.



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

FILED April 6, 2017 (Date)
IREL
Board / Commission
[Signature]
Signature, Executive Officer

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

IN RE:)	
	)	CASE NUMBERS: 16-309
Kurt A. Pagliai)	
Broker (B27543000)	)	INFORMAL SETTLEMENT
	)	AGREEMENT AND CONSENT
BlackAcre Realty LLC	)	ORDER IN A DISCIPLINARY CASE
2400 86 th Street, Suite 23)	
Urbandale, IA 50322)	
)	
RESPONDENT)	

The Iowa Real Estate Commission (Commission) and **Kurt A. Pagliai** (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) (2017).

1. The Commission issued the Respondent real estate broker license number B27543000 on June 18, 2013. Respondent’s license is in full force and effect until December 31, 2018. At all times relevant to this matter, the Respondent served both as the designated broker in charge and a licensed real estate broker officer for BlackAcre Realty LLC, license number F05647000, located in Urbandale, Iowa.

2. The Commission has jurisdiction of this disciplinary matter pursuant to Iowa Code chapters 17A, 272C, and 543B (2017). 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 March 8, 2017, 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 A. The Respondent admits to each and every allegation recited in the attached Statement of Charges. This case shall constitute one violation for purposes of Iowa Code section 543B.29(4) (2017).

4. The Respondent acknowledges that he 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 his 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.

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) (2017) 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 (2017).

CONSENT ORDER

IT IS THEREFORE ORDERED:

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

11. **CIVIL PENALTY**. Respondent shall pay a civil penalty to the Commission in the amount of three thousand dollars (\$500 for Count I, \$2,500 for Count II) on or before July 31, 2017. The civil penalty must come under a cover letter addressed to the Commission's Executive Officer, referencing Case Number 16-309.

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 July 31, 2017. The certificate of attendance must come under a cover letter addressed to the Commission's Executive Officer, referencing Case Number 16-309.

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 July 31, 2017. The audit report must come under a cover letter addressed to the Commission's Executive Officer, referencing Case Number 16-309.

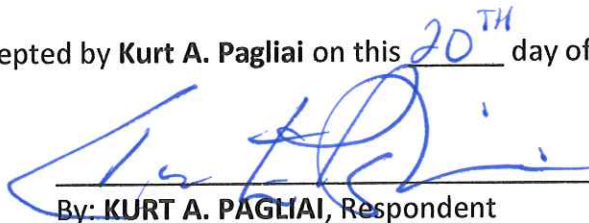
14. SUSPENSION. The Respondent's real estate broker license shall be suspended indefinitely commencing on July 31, 2017, pending submission of the civil penalty, proof of completion of the education, and compliant CPA Audit report required by Paragraphs 11 – 13 of this informal settlement agreement entered 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 July 31, 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.

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 Kurt A. Pagliai on this 20TH day of March, 2017.



By: **KURT A. PAGLIAI**, Respondent

State of Iowa)

County of Polk)

Signed and sworn to before me on this 20TH day of March, 2017, by:





Notary Public, State of Iowa
Printed Name: Josiah Doughty
My Commission Expires: June 25, 2017

FOR THE COMMISSION:

Voluntarily agreed to and accepted by the **IOWA REAL ESTATE COMMISSION** on this 6th day of APRIL, 2017.



TERRANCE M. DUGGAN, Chair
Iowa Real Estate Commission

FILED March 8, 2017 (Date)

J. Hill
Board / Commission
[Signature]
Signature, Executive Officer

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

IN RE:)	
	)	CASE NUMBER: 16-309
Kurt A. Pagliai)	
Broker (B27543000)	)	NOTICE OF HEARING AND
	)	STATEMENT OF CHARGES
BlackAcre Realty LLC)	
2400 86 th Street, Suite 23)	
Urbandale, IA 50322)	
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 (2017). 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 Kurt A. Pagliai ("Respondent") real estate broker license number B27543000 on June 18, 2013. Respondent's license is in full force and effect until December 31, 2018. At all times relevant to this matter, the Respondent served both as the designated broker in charge and a licensed real estate broker officer for BlackAcre Realty LLC, license number F05647000, located in Urbandale, 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 6th day of April, 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 A

4. **PREHEARING CONFERENCE.** A prehearing conference will be held by telephone on the 30th day of March, 2017 at 10:00 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
2nd 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 make trust account records available for inspection by Commission staff during usual business hours at the Respondent's regular place of business in violation of Iowa Code §§ 543B.34(1)(j), 543B.46(3), 543B.46(6), 543B.46(7) and/or 193E Iowa Administrative Code § 13.5. See Iowa Code § 543B.46(8), 193E Iowa Admin. Code §§ 18.2(7), 18.14(5)(i).

CIRCUMSTANCES

13. Respondent was assigned as the designated broker in charge of real estate brokerage firm BlackAcre Realty LLC at all times relevant to this matter. As the designated broker in charge of the real estate brokerage firm, the Respondent is responsible for ensuring compliance with all applicable rules and regulations governing the firm's operations in the state of Iowa, including maintenance of the trust account used by the firm.

14. On the afternoon of September 26, 2016 the Commission's trust account auditor ("auditor") arrived at the Respondent's regular place of business for an examination of his Iowa real estate trust account and real estate transaction records. Although the Respondent's real estate brokerage firm was open to the public for business, the auditor was unable to conduct an examination of the Respondent's Iowa real estate trust account and real estate transaction

records at that time because the Respondent's trust account records and transaction records were not onsite or were otherwise unavailable for immediate inspection.

COUNT II

15. 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).

CIRCUMSTANCES

16. On September 27, 2016 and October 7, 2016, an onsite examination of the Respondent's Iowa real trust account and transaction records was conducted by the Commission's trusts account auditor.

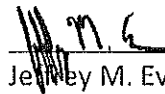
17. The auditor found that the Respondent is failing to properly maintain accurate accounting of the general ledger balance for the Respondent's Iowa real estate trust account.

18. 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.

19. 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 ledger accounts.

20. For the bank statement dated August 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 ledger accounts, and failure to perform accurate monthly reconciliations for the Iowa real estate trust account.

This Notice of Hearing and Statement of Charges is filed and issued on the 8th day of March, 2017.



Jeremy M. Evans, Executive Officer
Iowa Real Estate Commission

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