

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 86th 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.

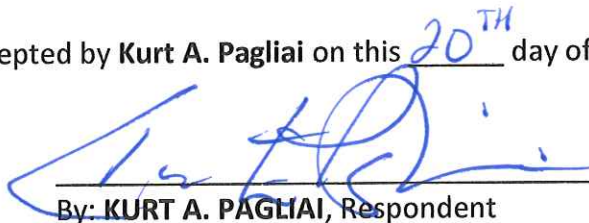
14. SUSPENSION. The Respondent's real estate broker license shall be suspended indefinitely commencing on July 31, 2017, pending submission of the civil penalty, proof of completion of the education, and compliant CPA Audit report required by Paragraphs 11 – 13 of this informal settlement agreement entered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

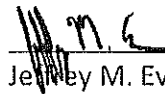
17. The auditor found that the Respondent is failing to properly maintain accurate accounting of the general ledger balance for the Respondent's Iowa real estate trust account.

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.



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 March 23, 2017 (Date)

I.R.E.C.

Board / Commission

J.M.E.
Signature, Executive Officer

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

IN THE MATTER OF:)	
	)	CASE NUMBER: 16-309
Kurt A. Pagliai)	
Broker (B27543000)	)	ORDER TO CANCEL
	)	FORMAL HEARING
BlackAcre Realty LLC)	
2400 86th Street, Suite 23)	
Urbandale, IA 50322)	
)	
RESPONDENT)	

The offices of the Iowa Real Estate Commission [Commission] have received a signed settlement agreement from Respondent Kurt A. Pagliai [B27543000]. To permit the Commission an opportunity to review the settlement agreement at the next scheduled meeting, the formal hearing set in this matter is hereby cancelled and the matter will be rescheduled for a future date if deemed necessary.

Dated this 23rd day of March 2017.

J.M.E.
Jeffrey M. Evans, Executive Officer
Iowa Real Estate Commission

FILED August 7, 2017 (Date)
JREC
Board / Commission
[Signature]
Signature Executive Officer

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

IN THE MATTER OF:)	
	)	CASE NUMBER: 16-309
Kurt A. Pagliai)	
Broker (B27543000)	)	ORDER DENYING EXTENSION
	)	REQUEST AND DISSOLVING STAY
BlackAcre Realty LLC)	
2400 86 th Street, Suite 23)	
Urbandale, IA 50322)	
)	
RESPONDENT)	

Kurt A. Pagliai's [Respondent] request for additional time to comply with paragraph 13 of the April 6, 2017 Informal Settlement Agreement and Consent Order [Consent Order] previously entered in this docket came before the Iowa Real Estate Commission [Commission] on August 3, 2017. In reviewing this request, the Commission had opportunity to review the supporting correspondence received from Respondent's legal counsel dated August 2, 2017. For the reason stated below, the Commission denies the request:

The Consent Order voluntarily agreed to by the Respondent provides that the Respondent's real estate broker license would be indefinitely suspended effective July 31, 2017 pending the Respondent's completion of multiple events, including completion of an 8-hour trust account course, remittance of a \$3,000 civil penalty, and submission of a report from a Certified Public Accountant demonstrating the Respondent's "current compliance with applicable standards, Iowa law and Commission trust account rules" following an "audit and to establish trust account records following Generally Accepted Accounting Principles." 4/6/2017 Consent Order, ¶¶ 11 – 14. The Consent Order further provided that the suspension would not be imposed should the Respondent complete all required events by July 31, 2017.

The Respondent did complete the required trust account course and he paid the mandated civil penalty prior to July 31, 2017. The Respondent, however, notified the Commission through correspondence from his legal counsel dated July 19, 2017, and again on July 28, 2017, that he would be unable to complete the required CPA audit report due to an ambiguity as to the report's required contents and scope. The Commission regarded this correspondence as a request to extend the due date for the CPA report and to stay the ordered license suspension pending that new date. The ordered suspension of the Respondent's real estate broker license was temporarily stayed so as to give the Commission the ability to review the Respondent's extension request on August 3, 2017 at its regularly scheduled meeting.

The Commission does not find the language used in the Consent Agreement to be ambiguous. Other licensees subject to identical terms as to those found in paragraph 13 of the Respondent's order have been able to submit timely and sufficient reports without additional clarification. No questions or objections to the terms of paragraph 13 were voiced by the Respondent before he voluntarily entered into the Consent Order. In choosing to enter the Consent Order, the Respondent expressly waived his right to challenge the terms of the agreement. Consent Order, ¶ 4.

Regardless, had the Respondent truly found the settlement terms ambiguous, he easily could have sought clarification from the Commission or Commission staff long before the final weeks of July when there would have still been sufficient time to complete the agreed upon task before the ordered suspension date. This is especially true given that a CPA firm received direction from Commission staff on May 12, 2017 as to the Commission's expectations for the audit report due for the Respondent's trust account under the terms of the Consent Order. No additional questions or follow up was received after that date from the Respondent or his CPA firm.

The Respondent provides no reasons or other good cause justifying his lack of diligence in seeking the clarification or assistance that he now claims he needs to comply with

the Consent Order. His voluntary closure of his trust account does not relieve him of his duties under the Consent Order to timely complete the required CPA audit and report. Given the very nature of trust funds as funds belonging to others entrusted to the Respondent's safekeeping, the Commission has every right to demand that the Respondent punctually complete all terms of the Consent Order so that it can be assured that the trust funds received by the Respondent prior to the closure of his trust account were properly handled and dispersed. Commission staff remains available, as it has throughout the preceding four months, to assist and guide the Respondent and his CPA as needed in meeting the requirements of paragraph 13 of the Consent Order.

Accordingly, the Commission orders that the Respondent's request for additional time to complete the CPA reporting requirement imposed by paragraph 13 be denied. The temporary stay of the ordered license suspension previously granted the Respondent shall be dissolved effective Friday, August 18, 2017 at 1:00 PM and all terms of the April 6, 2017 Consent Order, including any applicable license suspension, shall be enforced at that time.

Dated this 7th day of August 2017.



Jeffrey M. Evans, Executive Officer
Iowa Real Estate Commission

FILED August 23, 2017 (Date)
JR&C
Board / Commission
M. L.
Signature, Executive Officer

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

IN THE MATTER OF:)	
	)	CASE NUMBER: 16-309
Kurt A. Pagliai)	
Broker (B27543000))	
)	
BlackAcre Realty LLC	)	ORDER OF SATISFACTION
2400 86 th Street, Suite 23)	
Urbandale, IA 50322)	
)	
RESPONDENT)	

NOW on this 23rd day of August 2017, this matter comes before the undersigned Executive Office on behalf of the Iowa Real Estate Commission [Commission]. The Executive Officer finds as follows:

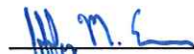
1. Kurt A. Pagliai [Respondent] voluntarily agreed to an Informal Settlement Agreement and Consent Order [Consent Order] dated April 6, 2017 that provided the Respondent's real estate broker license would be indefinitely suspended effective July 31, 2017 pending the Respondent's completion of multiple events, including completion of an 8-hour trust account course, remittance of a \$3,000 civil penalty, and submission of a report from a Certified Public Accountant demonstrating the Respondent's "current compliance with applicable standards, Iowa law and Commission trust account rules" following an "audit and to establish trust account records following Generally Accepted Accounting Principles." See 4/6/2017 Consent Order, ¶¶ 11 – 14.

2. The Commission subsequently granted a temporary stay of the ordered license suspension, which was to be dissolved effective Friday, August 18, 2017 at 1:00 PM and all terms of the April 6, 2017 Consent Order, including any applicable license suspension, was to be enforced at that time. See generally 8/7/2017 Order Denying Extension Request and Dissolving Stay.

3. On August 18, 2017, the Respondent presented to the Executive Officer proof that he has completed or otherwise fulfilled all conditions imposed by paragraphs 11 – 13 of the April 6, 2017 Consent Order.

IT IS THEREFORE ORDERED that having satisfied all conditions required of him by paragraphs 11 – 13 of the April 6, 2017 Consent Order within the time period allowed by the Commission, the Respondent's Iowa real estate broker license shall not be suspended. See 4/6/2017 Consent Order, ¶ 14; 8/7/2017 Order Denying Extension Request and Dissolving Stay. Respondent shall maintain compliance with all other terms of the April 6, 2017 settlement agreement.

Dated this 23rd day of August 2017.



Jeffrey M. Evans, Executive Officer
Iowa Real Estate Commission