

BEFORE THE IOWA REAL ESTATE COMMISSION
1918 SE HULSIZER
ANKENY, IOWA

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| IN RE: |) | |
| |) | CASE NUMBER: 07-266 |
| Cheryl Dirks |) | |
| Broker (B31818) |) | |
| HCH Real Estate |) | COMBINED STATEMENT OF |
| 205 West 1st Street |) | CHARGES, INFORMAL |
| Monticello, Iowa 52310 |) | SETTLEMENT AGREEMENT, |
| <u>Respondent.</u> |) | CONSENT ORDER IN A |
| |) | DISCIPLINARY CASE |

The Iowa Real Estate Commission (Commission) and **Cheryl Dirks** (Respondent) enter into this Combined Statement of Charges, Informal Settlement Agreement, and Consent Order in a Disciplinary Case (Order) pursuant to Iowa Code Sections 17A.10(1) and 272C.3(4) (2005).

1. The Commission issued the Respondent real estate broker license number (B31818) on January 1, 1994. Respondent's license is current and in full force and effect through December 31, 2008. At all times relevant to this matter, the Respondent was a licensed real estate broker officer, assigned to HCH Real Estate, a licensed real estate firm, license number (FO2356) located in Monticello, Iowa.

2. The Commission has jurisdiction of this disciplinary matter pursuant to Iowa Code chapters 17A, 272C, and 543B (2005). Licenses issued by the Commission are subject to the laws of the State of Iowa and to the administrative rules of the Commission.

STATEMENT OF CHARGES

COUNT I

3. Respondent is charged with engaging in a practice that is harmful or detrimental to the public in violation of Iowa Code sections 543B.29(3) by failing to represent a client's best interests. See Iowa Code §§ 543B.29(2), 543B.56(1)(b); 193E Iowa Admin. Code §§ 12.4(1)(b), 12.4(1)(c)(7) and 18.14(5)(s).

CIRCUMSTANCES

4. Respondent, in representing the both the Buyers and the Sellers, initiated a purchase agreement accepted by all parties that included a subject to sale contingency for the Buyer's current residence. The date of the agreement was June 15, 2007, with closing set for August 15, 2007.

5. When the Buyer's had not sold their home at time of the scheduled closing, the Respondent initiated an extension agreement which was signed by all parties extending the closing date until October 1, 2007.

6. On September 26, 2007, the Respondent initiated again initiated an extension agreement calling for closing to be moved to November 15, 2007, as the Buyer's home had not yet sold. This document was signed by the Seller's, however, was not signed by the Buyer's. The fact that the Buyer's did not sign the document was not disclosed to the Seller's.

7. On October 15, 2007, the Buyer's in this matter sold their home, and as they had not signed the extension agreement, opted out of the original purchase agreement.

SETTLEMENT AGREEMENT

8. Without admission of wrongdoing or guilt the Respondent does not contest the allegation as spelled out in the above Statement of Charges.

9. Respondent acknowledges that she has a right to receive notice of the above-stated charges and to request 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 notice and a hearing and all attendant rights, including the right to seek judicial review. This Order constitutes discipline against the Respondent, and is the final agency order in this contested case pursuant to Iowa Code section 17A.10 and 193 Iowa Administrative Code 7.4.

10. 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.

11. This Order shall be part of the permanent record of 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.

12. Failure to comply with the terms of this Order shall be prima facie evidence of a violation of Iowa Code sections 543B.29(3), 543B.34(2) and 272C.3(2)(a) (2005) 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.

13. This Order is not binding on the Iowa Real Estate 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.

14. Upon acceptance by both the Commission and Respondent, this Combined Statement of Charges, Informal Settlement 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 (2005).

CONSENT ORDER

IT IS THEREFORE ORDERED:

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

16. **CIVIL PENALTY.** The Respondent shall pay a civil penalty to the Commission in the amount of \$250 no later than 30 calendar days after acceptance of this Order by the Commission. The civil penalty must come under a cover letter addressed to the Commission's Executive Officer and refer to case 07-266.

17. **EDUCATION.** The Respondent shall attend the two Commission approved eight (8) hour courses "Real Estate Law and Agency Law" and "Contract Law and Contract Writing." 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 twelve (12) 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 07-266.

18. **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 Combined Statement of Charges, Informal Settlement Agreement, and Consent Order are agreed to and accepted by the Iowa Real Estate Commission and the Respondent.

FOR THE RESPONDENT:

Voluntarily agreed to and accepted by **Cheryl Dirks** on this 5th day of August, 2008.

[Redacted Signature]

CHERYL DIRKS, Respondent

State of Iowa)

County of Jones)

Signed and sworn to before me on this 5th day of August, 2008, by

[Redacted Signature]



Notary Public, State of Iowa

Printed Name: Lori L Bertling

My Commission Expires: 2-17-2010

FOR THE COMMISSION:

Voluntarily agreed to and accepted by the **IOWA REAL ESTATE COMMISSION** on this 11 day of Sept, 2008.

[Redacted Signature]

JAMES E. HUGHES, Chair
Iowa Real Estate Commission