

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

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INRE:	)	
	)	CASE NUMBER: 08-078
Michael T. Kelly	)	
Broker (B25830)	)	
	)	
	)	
	)	COMBINED STATEMENT OF
	)	CHARGES, INFORMAL
Dave Kelly & Co, Inc.	)	SETTLEMENT AGREEMENT,
1102 Hwy 9 East, PO Box 8	)	AND CONSENT ORDER IN A
Decorah, Iowa 52101	)	DISCIPLINARY CASE
Respondent.	)	

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The Iowa Real Estate Commission (Commission) and Michael T. Kelly (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 a real estate broker officer license number B25830 on January 12, 1998. Respondent's license is current and in full force and effect through December 31, 2009. At all times relevant to this matter, the Respondent was a licensed real estate broker officer assigned to Dave Kelly & Co, Inc, a licensed real estate firm, license number F03772 located in Decorah, 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 failing to timely advise the Commission of a change in his address of residence in violation of Iowa Code sections 543B.16, 543B.18, and 543B.29(8); and 193E Iowa Administrative Code sections 7.2(6) and 18.14(5)(d)(5).

#### CIRCUMSTANCES

4. In March of 2008, the Commission attempted to mail to the Respondent information concerning his Iowa real estate license. The correspondence was sent to the address on file with the Commission.

5. The license was returned to the Commission by postal authorities with the notation: "insufficient address-unable to forward."

6. The Commission verified through an e-mail with the Respondent that the Respondent had in fact changed his place residence and had failed to notify the Commission of the address of her new residence within five days.

#### SETTLEMENT AGREEMENT

7. Respondent admits each and every allegation in the above-stated Statement of Charges.

8. Respondent acknowledges that he 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 his 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.

9. 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.

10. 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.

11. 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.

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12. 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.

13. 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:

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

15. CIVIL PENALTY. The Respondent shall pay a civil penalty to the Commission in the amount of \$50 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 08-078.

16. 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 Michael T. Kelly on this 6th day of MAY, 2008.

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Michael T. Kelly, Respondent

State of Iowa )

County of Winneshiek)

Signed and sworn to before me on this 6<sup>th</sup> day of May '2008, by



Notary Public, State of Iowa

Printed Name: Sandra Lien

My Commission Expires: \_\_\_\_\_

FOR THE COMMISSION:

Voluntarily ~~agreed to~~ and accepted by the IOWA REAL ESTATE COMMISSION on  
this 22 day of May, 2008.

