

**BEFORE THE IOWA REAL ESTATE COMMISSION
1920 S.E. HULSIZER
ANKENY, IOWA**

IN RE:	)	Case Nos. 09-003, 09-094 and
	)	09-206
Scott E. Thomas, Sr.)	
Broker (B36888))	
)	
Associates Realty, LLC	)	INFORMAL SETTLEMENT
5555 Glen Oaks Point	)	AGREEMENT AND CONSENT
West Des Moines, IA 50266	)	ORDER IN A DISCIPLINARY
	)	CASE
RESPONDENT.)	

The Iowa Real Estate Commission (Commission) and **Scott E. Thomas, Sr.** (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) (2009).

1. The Commission issued the Respondent real estate broker license number B36888 on March 8, 2006. Respondent's license is active and in full force and effect until December 31, 2011. At all times relevant to this matter, the Respondent was a licensed broker assigned to Associates Realty LLC, a licensed firm, license number F04864, located in West Des Moines, Iowa.

2. The Commission has jurisdiction of this disciplinary matter pursuant to Iowa Code chapters 17A, 272C, and 543B (2009). 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 November 30, 2009, 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. The Respondent, without admission of wrongdoing or guilt, does not contest the allegations recited in Count I (Case No. 09-003) and Count III (Case No. 09-206) of the attached Statement of Charges.

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 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.

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(3), 543B.34(2) and 272C.3(2)(a) (2009) 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 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.

9. Upon acceptance by both the Commission and Respondent, this 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 (2009).

CONSENT ORDER

IT IS THEREFORE ORDERED for purposes of Count I of the attached hearing complaint (Case No. 09-003):

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

11. **CIVIL PENALTY.** The Respondent shall pay a civil penalty to the Commission in the amount of \$2,500 no later than 60 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 09-003.

12. **EDUCATION.** Pursuant to 193E Iowa Administrative Code Section 18.14 (1)(f), the Respondent shall attend the Commission approved twelve (12) hour course "Developing Professionalism and Ethical Practices." These hours shall be in addition to any real estate

continuing education required 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 Order by the Commission and must come under a cover letter addressed to the Commission's Executive Officer and refer to case 09-003.

IT IS FURTHER ORDERED for purposes of Count II of the attached hearing complaint (Case No. 09-094):

13. **DISMISSAL.** The Commission dismisses Count II (Case No. 09-094) of the attached hearing complaint for lack of probable cause.

IT IS LASTLY ORDERED for purposes of Count III of the attached hearing complaint (Case No. 09-206):

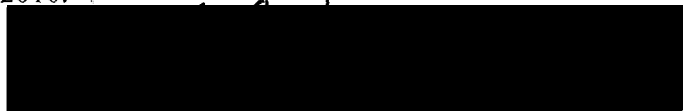
14. **REPRIMAND.** Pursuant to 193E Iowa Administrative Code section 18.14(1)(j), the Respondent is reprimanded.

15. **CIVIL PENALTY.** The Respondent shall pay a civil penalty to the Commission in the amount of \$1,000 no later than 60 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 09-206.

WHEREFORE, the terms of this 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 **Scott E. Thomas, Sr.** on this 29th day of July, 2010.



✓ **SCOTT E. THOMAS, SR.**, Respondent

State of Iowa
County of Folk

Signed and sworn to before me on this 29th day of July, 2010, by



Notary Public, State of Iowa
Printed Name: ASHLEE ROSS
My Commission Expires: 6/30/13



FOR THE COMMISSION:

Voluntarily agreed to and accepted by the **IOWA REAL ESTATE COMMISSION** on
this 9 day of September, 2010.



LAURIE DAWLEY, Chair
Iowa Real Estate Commission

**BEFORE THE REAL ESTATE COMMISSION
OF THE STATE OF IOWA**

IN RE:)	
	)	CASE NUMBERS: 09-003,
Scott E. Thomas Sr.	)	09-094,
Broker (B36888)	)	09-206
)	
Associates Realty, LLC.	)	NOTICE OF HEARING
5555 Glen Oaks Pt.)	
West Des Moines, Iowa 50266)	
)	

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 (2009). 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 the Respondent real estate broker license number B36888 on March 8, 2006. Respondent’s license is in full force and effect until December 31, 2011. At all times relevant to this matter, the Respondent was the real estate broker in charge of Associates Realty, LLC, a licensed real estate firm, license number F04864, located in West Des Moines, Iowa.

1. **HEARING.** A contested case hearing will be held concerning the below-stated disciplinary charges before the Iowa Real Estate Commission on the **25th** day of **February, 2010**, at **9:30 o’clock AM**, at 1920 S.E. Hulsizer Road, Ankeny, 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 **19th** day of **February, 2010** 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. **PROSECUTION.** 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: 515-281-6771

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

James H. Sayre
Attorney at Law
Suite 101, Lake Pointe Office Building
13375 University Ave.
Clive, IA 50325

10. **SETTLEMENT.** The procedural rules governing the Board'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 515-281-7397, or Fax 515-281-7411.

STATEMENT OF CHARGES

COUNT I (IREC No. 09-003)

12. The Respondent is charged with engaging in a practice harmful or detrimental to the public, and failing to diligently exercise reasonable skill and care in providing brokerage services to all parties in violation of Iowa Code section 543B.29(1)(c), 543B.34, 543B.56 (2009) by failing to notify the Seller in a timely manner that a closing would not take place. See Iowa Code §§ 543B.34(8) & (11), 543B.56(1)(a) & (b); 543B.56(2)(b) and 193E Iowa Admin. Code § 18.14(5)(s).

CIRCUMSTANCES

13. The Respondent represented the Sellers of residential property located in Ankeny, Iowa as listing agent. In July, 2008, the Seller accepted a purchase agreement for the sale of their property that provided for an August 4, 2008, closing date.

14. On July 29, 2008, the Buyer's agent notified the Respondent that closing may not take place as scheduled on August 4, 2008. The Respondent advised the Buyer's agent that he would pass this information on to the Sellers in hopes that the problem would work out and closing would take place as scheduled.

15. On August 1, 2008, the Buyer's agent notified the Respondent that the closing would not take place on August 4, 2008.

16. On August 4, 2008, the Sellers called and left the Respondent a message requesting information on what time the closing would take place. The Respondent replied to the Sellers with a text message advising the Sellers to contact the Buyer's agent for information concerning the closing. It was at that time that the Sellers first learned the closing would not take place as established in the purchase agreement.

COUNT II (IREC No. 09-094)

17. The Respondent is charged with engaging in a practice harmful or detrimental to the public by submitting or causing to be submitted, whether intentional or otherwise, misleading advertising promoting a prohibited practice. See Iowa Code sections 543B.29(1)(c) & (g); 543B.34(1), (2), (3), & (11) (2009); and 193E Iowa Administrative Code section 10.1(2); 11.6(543B); and 18.14(5)(s).

CIRCUMSTANCES

18. On April 9, 2009, in advertising found at www.iowa.getmoreoffers.com for eflatfeeRealty.com, a licensed trade name for Associates Realty, LLC, the Respondent advertised a money back guarantee. The guarantee stated that if a Seller's home is not sold through his flat fee program, but is sold through a traditional broker, the Respondent would refund the Seller's base fee back from the proceeds of referral funds paid to eflatRealty.com by the selling brokerage.

19. The Respondent's guarantee program as described in his advertisement constitutes a prohibited practice under Commission rules in that payment of a referral fee to an unlicensed third party is prohibited. The advertisement of such a prohibited practice is misleading and/or deceptive.

COUNT III
(IREC No. 09-206)

20. The Respondent is charges with failing to comply with the mandatory errors and omissions insurance requirement in violation of Iowa Code sections 543B.29(1)(c); 543B.47(1); 543B.47(6)(2009) and 193E Iowa Administrative Code sections 18.2(5); 18.14(5)(s) and 19.6(6) & (7).

CIRCUMSTANCES

21. In August of 2009, the Respondent was sent an audit to verify whether he possessed mandatory errors and omissions insurance coverage.

22. The Respondent failed to obtain errors and omissions insurance coverage for 2009 and could not therefore provide proof of insurance to the Commission for the current policy period.

**This Notice of Hearing and Statement of Charges is filed and issued on the day of
, 2010.**

David Batts, Executive Officer
Iowa Real Estate Commission

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