

## WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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The status of an appeal may be found on court access websites at:

<http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wscga>

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1. DAVID J. GERMANN (Applicant) has filed an application for renewal of his Wisconsin Real Estate Salesperson license (no. 83916-94). Such license, first issued on April 14, 2017, was scheduled for renewal by December 14, 2018. Applicant's request to renew was timely.
2. Applicant's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is N7224 Three Rivers Boulevard, Unit 1, New Lisbon, Wisconsin 53950.
3. Information received in the application process reflects that the Applicant has the following conviction and violation on his record:
  - A. On or about July 4, 2008 – Operating while Intoxicated 1<sup>st</sup>, an ordinance violation.
  - B. On or about October 18, 2018- Operating while Intoxicated 2<sup>nd</sup>, a misdemeanor
4. On or about April 3, 2019, Applicant was mailed a letter providing him with an opportunity to provide the Department with evidence of his rehabilitation and fitness to engage in the practice of a Real Estate Salesperson, pursuant to Wis. Stat. § 111.335(4)(c). Correspondence from Applicant was reviewed before this final determination was made.

### CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Examining Board has jurisdiction over this matter pursuant to Wis. Stat. §§ 452.14(3) and 440.08(4)(a).
2. Pursuant to Wis. Stat. § 452.14(3)(p), the Real Estate Examining “[B]oard may revoke, suspend, or limit the license of any licensee,... if it finds that the licensee has done any of the following:...(p) Subject to ss. 111.321, 111.322, and 111.335, been convicted of an offense the circumstances of which substantially relate to real estate practice.” A substantial relationship occurs where “the tendencies and inclinations to behave a certain way in a particular context are likely to reappear later in a related context, based on the traits revealed.” *County of Milwaukee v. Labor & Industry Review Comm’n*, 139 Wis. 2d 805, 824 (1987). The crux of the inquiry is the circumstances which foster criminal activity, e.g., the opportunity for criminal behavior, the reaction to responsibility, or the character traits of the person. *Id.* Your conviction history calls into question your current competency to transact the business of real estate sales in a manner that protects the public.
3. The facts and circumstances surrounding the above-referenced conviction record substantially relate to the practice of a Real Estate Salesperson.

Applicant has been convicted of driving while intoxicated on two occasions, the most recent being less than one (1) year ago. Applicant’s convictions substantially relate to the practice of a real estate salesperson because the business of real estate involves the ability to interact with clients, other professionals, and the public in an appropriate and safe manner. It is also common practice for real estate salespersons to drive with clients in their vehicles in the course of conducting their business. Applicant stated that he “made a very life altering mistake in driving while intoxicated.” Applicant’s driver’s license was revoked for 13 months and he was required to have an ignition interlock on his vehicle. Applicant was also ordered to undergo an AODA assessment and comply with a driver’s safety plan. Applicant’s assessment indicated “Irresponsible Use of Alcohol.” At this time, due to the recent nature of his conviction, Applicant has failed to show competent evidence of sufficient rehabilitation and fitness to practice as a real estate salesperson without limitations.

4. Limitations upon Applicant’s license are necessary to protect the public health, safety or welfare, pursuant to Wis. Stat. § 440.08(4).
5. Applicant, by his conduct, is subject to limitations against his license, pursuant to Wis. Stat. §§ 111.335(3)(a)1., 452.14(3), and 440.08(4).

### **ORDER**

NOW, THEREFORE, IT IS ORDERED that DAVID J. GERMANN is GRANTED A REAL ESTATE SALESPERSON LICENSE subject to the following LIMITATIONS, TERMS, AND CONDITIONS:

### Practice Limitations

- A.1. Applicant shall, at all times, practice as a Real Estate Salesperson under the supervision of a Wisconsin licensed Real Estate Broker approved by the Board. Approval shall be obtained through correspondence with the Department of Safety and Professional Services Monitor (Department Monitor).
- A.2. Applicant shall notify his broker-supervisor(s)/employer(s) of his history of arrests and convictions prior to employment. Applicant shall show a copy of this Order to his current and any future employer. Applicant shall provide the Department Monitor with written acknowledgement from each employer that a copy of this Order has been received. Such acknowledgement shall be provided to the Department Monitoring within fourteen (14) days of beginning new employment and/or within fourteen (14) days of the date of this Order for employment current as of the date of this Order.
- A.3. Applicant shall commit no new violations of law and shall report all law enforcement contacts leading to arrest, charge or conviction, including DWI/OWI and municipal/ordinance violations, to the Department Monitor within forty-eight (48) hours of any such event, including any convictions resulting from pending charges.
- A.4. Applicant shall not consume alcohol while conducting or engaged in the practice of real estate.
- A.5. Applicant shall not drive current or prospective real estate clients in any motor vehicle that requires a Department of Transportation issued license.
- A.6. Applicant must have and maintain a valid driver's license when driving for purposes of conducting real estate business.

### Reporting Requirements

- A.7. Applicant shall file quarterly reports with the Board at the direction of the Department Monitor commencing ninety (90) days after Applicant commences employment under this Order. Each report shall include the following:
  - i. The name, address and telephone number of Applicant, and name, address and telephone number of his employer;
  - ii. A statement from the Applicant as to whether he has had any law enforcement contacts leading to arrest, charge or conviction (including DWI/OWI and municipal/ordinance violations) during the term of the Order.
  - iii. Applicant shall report to the Department Monitor any change of employment status, residence, address or telephone number within five (5) days of the date of a change.
- A.8. Applicant shall arrange for written reports from his broker-supervisor(s)/employer(s) to be provided to Department Monitor on a quarterly basis, as directed by Department Monitor. These reports shall assess Applicant's work performance and describe the circumstances of his employment, including the nature and extent of the Applicant's sales activities and whether he has practiced in compliance with all laws governing the practice of real estate as a salesperson.

- A.9. Applicant is responsible for compliance with all of the terms and conditions of this Order, including the timely submission of reports by others. Applicant shall promptly notify Department Monitor of any suspected violations of any of the terms and conditions of this Order.
- A.10. The Department Monitor is the individual designated by the Board as its agent to coordinate compliance with the terms of this Order. Any requests, petitions, reports or other information required by this Order shall be mailed, faxed or delivered to:

DEPARTMENT MONITOR  
Department of Safety and Professional Services  
Division of Legal Services & Compliance  
P.O. Box 7190, Madison, WI 53707-7190  
Telephone: (608) 267-3817; Fax: (608) 266-2264  
[dspsmonitoring@wi.gov](mailto:dspsmonitoring@wi.gov)

You may also submit this information online via DSPS Monitoring Case management System here:

<https://app.wi.gov/DSPSMonitoring>

#### Petitions for Modification

- A.11. Applicant may petition the Department Monitor for full, unrestricted licensure upon demonstration of continuous, successful practice in compliance with the terms and conditions of the Order for at least one (1) year. "Practice in compliance" includes the submission of work reports, the content of which are satisfactory to the Board. Applicant's petition must include his history of employment from the effective date of this Order that states the dates and names of any employer, such employment in total equaling one (1) year of practice. Any such petition shall be accompanied by a written recommendation from Applicant's current employer that includes, among other things, the dates of employment and scope of responsibility during such employment. A denial of such a petition for modification shall not be deemed a denial of license under Wis. Stat. §§ 227.01(3), or 227.42, or Wis. Admin. Code Ch. SPS 1, and shall not be subject to any right to further hearing or appeal.
- A.12. Applicant may petition for full, unrestricted licensure upon demonstration of continuous, successful practice in compliance with the terms of the Order for at least two (2) years. "Practice in compliance" includes the submission of work reports, the content of which are satisfactory to the Board, Department Monitor, or their designee(s).

Costs

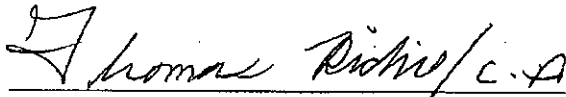
- A.13. Applicant shall be responsible for all costs and expenses associated with compliance with the terms of this Order.

Suspension

- A.14. In the event that the Applicant violates any term of this Order, Applicant's license may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing, until Applicant has provided proof, which is determined by the Board or its designee to be sufficient, that Applicant is in compliance with the terms of the Order. The Board may, in addition and/or in the alternative, refer any violation of this Order to the Division of Legal Services and Compliance for further investigation and action.

Dated at Madison, Wisconsin this 4 day of October, 2019

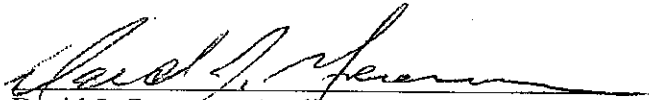
By:

 Thomas R. Dickie/c.A.

A Member of the Real Estate Examining Board


1. The Applicant has filed an application to renew a Real Estate Salesperson license.
2. Information received by the Board reflects a basis for denial of the renewal of licensure.
3. Based upon the information of record herein, the Board agrees to issue, and the Applicant agrees to accept, an Order granting a renewal of license, subject to the terms and conditions set forth in the attached Order adopting the Stipulation.
4. Applicant understands that by signing this Stipulation, Applicant voluntarily and knowingly waives the following rights:
  - The right to request a hearing related to the denial of the application;
  - assuming a hearing takes place wherein the Applicant has the burden of proof by a preponderance of the evidence;
  - the right to confront and cross-examine the witnesses against Applicant;
  - the right to call witnesses on Applicant's behalf and to compel their attendance by subpoena;
  - the right to testify on Applicant's own behalf;
  - the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision;
  - the right to petition for rehearing; and
  - all other applicable rights afforded to Applicant under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and other provisions of state or federal law.
5. Applicant is aware of Applicant's right to seek legal representation and has been provided an opportunity to obtain legal counsel before signing this Stipulation.
6. Applicant agrees to the adoption of the attached Order Granting Limited License by the Board. The parties to the Stipulation consent to the entry of the attached Order Granting Limited License without further notice, appearance, or consent of the parties.

7. Applicant waives all rights to any appeal of the Board's Order, as adopted in the form as attached.
8. Applicant is informed that the Order Granting Limited License is a public record and will be published in accordance with standard procedure.



David J. Germann, Applicant  
N7224 Three Rivers Boulevard  
Unit I  
New Lisbon, WI 53950  
License No. 83916-94

9-16-19  
Date



A Member of the Real Estate Examining Board  
Department of Safety and Professional Services  
P.O. Box 7190  
Madison, WI 53707-7190

10/02/19  
Date