

CHAPTER 1
BUSINESS CONDUCT

[Prior to 6/15/88, see Real Estate Commission[700] Ch 1]

193E—1.1(543B) Definitions.

“*Advance fees*” shall mean any fees charged for services to be paid in advance of the rendering of such services including, without limitation, any fees charged for listing, advertising, or offering for sale or lease any real property, but excluding any fees paid solely for advertisement in a newspaper of general circulation.

“*Affiliated licensee*” means a broker associate or salesperson, as defined in Iowa Code section 543B.5, who is under the supervision of a broker.

“*Brokerage agreement*” means a contract between a broker and a client which establishes the relationship between the parties as to the brokerage services to be performed.

“*Buyer*” includes a purchaser, tenant, vendee, lessee, party to an exchange, or grantee of an option. Selected rules in this chapter will at times refer separately to “buyers” and “tenants” to clarify licensee’s duties and obligations.

“*Client*” means a party to a transaction who has an agency agreement with a broker for brokerage services.

“*Common source information companies*” means any individual, corporation, limited liability company, business trust, estate, trust, partnership, association, or any other legal entity (except any government or governmental subdivision or agency, or any officer or employee thereof acting in such individual’s official capacity) that is a source, compiler, or supplier of information regarding real estate for sale or lease and other data and includes, but is not limited to, multiple listing services.

“*Confidential information*” means information made confidential by statute, regulation, or express instructions from the client. Confidential information:

1. Shall include, but not be limited to, the following:
 - Information concerning the client that, if disclosed to the other party, could place the client at a disadvantage when bargaining;
 - That the seller or landlord is willing to accept less than the asking price or lease price for the property;
 - That the buyer or tenant is willing to pay more than the asking price or lease price for the property;
 - What the motivating factors are for the party selling or leasing the property;
 - What the motivating factors are for the party buying or leasing the property;
 - That the seller or landlord will agree to sale, lease, or financing terms other than those offered;
 - That the buyer or tenant will agree to sale, lease, or financing terms other than those offered;
 - The seller’s or landlord’s real estate needs;
 - The buyer’s or tenant’s real estate needs;
 - The seller’s or landlord’s financial information, except the seller’s ability to sell and the landlord’s ability to lease are considered a material fact;
 - The buyer’s or tenant’s financial qualifications, except the buyer’s ability to buy and the tenant’s ability to lease are considered a material fact.
2. Does not include “material adverse facts” as defined in Iowa Code Supplement section 543B.5.

3. Shall not be disclosed unless:

- The client to whom the information pertains provides informed written consent to disclose the information;

- The disclosure is required by statute or regulation, or failure to disclose the information would constitute fraudulent representation;

- The information is made public or becomes public by the words or conduct of the client to whom the information pertains or from a source other than the licensee; or

- The disclosure is necessary to defend the licensee against an accusation of wrongful conduct in an actual or threatened judicial proceeding, an administrative proceeding before the commission, or in a proceeding before a professional committee.

“*Consumer*” means a person seeking or receiving real estate brokerage services.

“*Contract between the buyer and seller*” includes an offer to purchase, a sales contract, an option, a lease-purchase option, an offer to lease, or a lease.

“*Customer*” means a consumer of real estate services in connection with a real estate transaction who is not being represented by the licensee, but for whom the licensee may perform ministerial acts. A customer may be a client of another broker, may not have yet decided whether or not to be represented by any broker, or may have chosen not to be represented by any broker.

“*Dual agent*” means a licensee who, with the written informed consent of all the parties to a contemplated real estate transaction, has entered into a brokerage agreement with and therefore represents both the seller and buyer or both the landlord and tenant in the same in-house transaction.

“*Firm*” means a licensed partnership, association, or corporation.

“*Licensee*” means a designated broker as defined in Iowa Code Supplement section 543B.5, a broker associate as defined in Iowa Code section 543B.5(1), and a salesperson as defined in 543B.5(3).

“*Listing broker*” means the real estate broker who obtains a listing of real estate or of an interest in a residential cooperative housing corporation.

“*Ministerial acts*” means those acts that a licensee may perform for a consumer that are informative in nature and do not rise to the level of specific assistance on behalf of a consumer. For purposes of this rule, ministerial acts include, but are not limited to, the following:

1. Responding to telephone inquiries by consumers as to the availability and pricing of brokerage services;

2. Responding to telephone inquiries from a consumer concerning the price or location of property;

3. Attending an open house and responding to questions about the property from a consumer;

4. Setting an appointment to view property;

5. Responding to questions of consumers walking into a licensee’s office concerning brokerage services offered or particular properties;

6. Accompanying an appraiser, inspector, contractor, or similar third party on a visit to a property;

7. Describing a property or the property’s condition in response to a consumer’s inquiry;

8. Completing business or factual information for a consumer on an offer or contract to purchase on behalf of a client;

9. Showing a client through a property being sold by an owner on the owner’s own behalf; or

10. Referring a person to another broker or service provider.

“*Seller*” includes an owner, landlord, vendor, lessor, party to an exchange, or grantor of an option. Selected rules in this chapter will at times refer separately to “sellers” and “landlords” to clarify licensee’s duties and obligations.

“*Selling broker*” means a real estate broker who finds and obtains a buyer in a transaction.

“*Single agent*” means a licensee who represents only one party in a real estate transaction. A single agent includes a broker and any affiliated broker associates or salespersons representing a party exclusively or nonexclusively, regardless of whether it be all affiliated broker associates or salespersons, or only identified broker associates or salespersons, or a group of identified broker associates or salespersons. A single agent may be one of the following:

1. “*Seller’s agent*” which means a licensee who represents the seller in a real estate transaction;
2. “*Landlord’s agent*” which means a licensee who represents the landlord in a leasing transaction;
3. “*Buyer’s agent*” which means a licensee who represents the buyer in a real estate transaction;

and

4. “*Tenant’s agent*” which means a licensee who represents the tenant in a leasing transaction.

“*Specific assistance*” means any communication beyond casual conversation concerning the facts and features of a property which occurs prior to the point of discussing any specific financial qualifications of the buyer or tenant, selling or buying motives or objectives of the seller or buyer, or tenant or landlord, or eliciting or accepting information involving a proposed or preliminary offer associated with a specific property, in which the person may unknowingly divulge any confidential personal or financial information, which if disclosed to the other party, could harm their bargaining position. For the purposes of this rule, specific assistance shall not include a bona fide “open house” showing, preliminary conversations or “small talk” concerning price range, location and property styles, or responses to general factual questions from a potential buyer or tenant concerning properties which have been advertised for sale or lease.

“*Subagent*” means a broker and a broker’s affiliated licensees, engaged by another broker to act as an agent for a client. The subagent has the same obligations and responsibilities to the client as the primary broker representing the client.

“*Third party*” means a person or entity that is not a client, is not a party to the transaction, and has no agency relationship to a real estate brokerage.

“*Timely*” means done or occurring at a reasonable time under the circumstances.

“*Transaction*” means the sale, exchange, purchase, or rental of, or the granting or acceptance of an option to sell, exchange, purchase, or rent an interest in real estate, but excluding the subleasing of an interest in a residential cooperative housing corporation, when the leases are for one year or less.

“*Undisclosed dual agent*” means a licensee representing two or more clients in the same transaction whose interests are adverse without the knowledge and informed consent of the clients.

193E—1.2(543B) Support personnel for licensees; permitted and prohibited activities. Whenever a licensee affiliated with a broker engages support personnel to assist the affiliated licensee in the activities of the real estate brokerage business, both the firm or sponsoring broker and the affiliated licensee are responsible for supervising the acts or activities of the personal assistant; however, the affiliated licensee shall have the primary responsibility for supervision. Unless the support personnel holds a real estate license, the support personnel may not perform any activities, duties, or tasks of a real estate licensee as identified in Iowa Code sections 543B.3 and 543B.6 and may perform only ministerial duties that do not require discretion or the exercise of the licensee’s own judgment. Personal assistants shall be considered support personnel.

1.2(1) Individuals actively licensed with one firm or broker may not work as support personnel for a licensee affiliated with another firm or broker. Individuals with an inactive status license may work as support personnel for a licensee, but may not participate in any activity that requires a real estate license.

1.2(2) Any real estate brokerage firm or broker that allows an affiliated licensee to employ, or engage under an independent contractor agreement, support personnel to assist the affiliated licensee in carrying out their brokerage activities must comply with the following:

- a. Implement a written company policy authorizing the use of support personnel by licensees;
- b. Specify in the written company policy, which may incorporate the duties listed in subrule 1.23(3), any duties that the support personnel may perform in behalf of the affiliated licensee;
- c. Ensure that the affiliated licensee and the support personnel receive copies of the duties support personnel may perform.

1.2(3) Broker supervision and improper use of license and office. While individual and designated brokers shall be responsible for supervising the real estate related activities of all support personnel, an affiliated licensee employing a personal assistant shall have the primary responsibility for supervision of that personal assistant. A broker shall not be held responsible for inadequate supervision if:

- a. The unlicensed person violates a provision of Iowa Code chapter 543B or IAC 193E that is in conflict with the supervising broker's specific written policies or instructions;
- b. Reasonable procedures have been established to verify that adequate supervision was being performed;
- c. The broker, upon hearing of the violation, attempted to prevent or mitigate the damage;
- d. The broker did not participate in the violation; and
- e. The broker did not attempt to avoid learning of the violation.

1.2(4) In order to provide reasonable assistance to licensees and their support personnel, but without defining every permitted activity, the commission has identified certain tasks that unlicensed support personnel under the direct supervision of a licensee affiliated with a firm or broker can and cannot perform.

- a. Permitted activities include, but are not limited to, the following:
 - (1) Answer the telephone, provide information about a listing to other licensees, and forward calls from the public to a licensee;
 - (2) Submit data on listings to a multiple listing service;
 - (3) Check on the status of loan commitments after a contract has been negotiated;
 - (4) Assemble documents for closings;
 - (5) Secure documents that are public information from the courthouse and other sources available to the public;
 - (6) Have keys made for company listings;
 - (7) Write advertisements and promotional materials for the approval of the licensee and supervising broker;
 - (8) Place advertisements in magazines, newspapers, and other media as directed by the supervising broker;
 - (9) Receive, record, and deposit earnest money, security deposits, and advance rents;
 - (10) Type contract forms as directed by the licensee or the supervision broker;
 - (11) Monitor personnel files;
 - (12) Compute commission checks;
 - (13) Place signs on property;
 - (14) Order items of routine repair as directed by a licensee;

(15) Act as courier for such purposes as delivering documents or picking up keys. The licensee remains responsible for ensuring delivery of all executed documents required by Iowa law and commission rules;

(16) Schedule appointments with the seller or the seller's agent in order for a licensee to show a listed property;

(17) Arrange dates and times for inspections;

(18) Arrange dates and times for the mortgage application, the preclosing walk-through, and the closing;

(19) Schedule an open house;

(20) Perform physical maintenance on a property; or

(21) Accompany a licensee to an open house or a showing and perform the following functions as a host or hostess:

1. Open the door and greet prospects as they arrive;

2. Hand out or distribute prepared printed material;

3. Have prospects sign a register or guest book to record names, addresses and telephone numbers;

4. Accompany prospects through the home for security purposes and not to answer any questions pertaining to the material aspects of the house or its price and terms.

b. Prohibited activities include, but are not limited to, the following:

(1) Making cold calls by telephone or in person or otherwise contacting the public for the purpose of securing prospects for listings, leasing, sale, exchanges, or property management;

(2) Hosting open houses, kiosks, home show booths, or fairs independently;

(3) Preparing promotion materials or advertisements without the review and approval of license and supervising broker;

(4) Showing property independently;

(5) Answering any questions on title, financing, or closings (other than time and place);

(6) Answering any questions regarding a listing except for information on price and amenities expressly provided in writing by the licensee;

(7) Discussing or explaining a contract, listing, lease, agreement, or other real estate document with anyone outside the firm;

(8) Negotiating or agreeing to any commission, commission split, management fee, or referral on fee on behalf of a licensee;

(9) Discussing with the owner of real property the terms and conditions of the real property offered for sale or lease;

(10) Collecting or holding deposit moneys, rent, other moneys or anything of value received from the owner of real property or from a prospective buyer or tenant;

(11) Providing owners of real property or prospective buyers or tenants with any advice, recommendations or suggestions as to the sale, purchase, exchange, rental, or leasing of real property that is listed, to be listed, or currently available for sale or lease; or

(12) Holding one's self out in any manner, orally or in writing, as being licensed or affiliated with a particular firm or real estate broker as a licensee.

193E—1.3(543B) Information provided by nonlicensed support personnel restricted. Nonlicensed support personnel may, on behalf of the employer licensee, provide information concerning the sale, exchange, purchase, rental, lease, or advertising of real estate, only to another licensee. Support personnel shall provide information only to another licensee that has been provided to them by the employer licensee either verbally or in writing. Support personnel shall provide the information only to another licensee.

193E—1.4 to 1.7 Reserved.

193E—1.8(543B) Advertising under own name. Salespersons or broker associates are prohibited from advertising under their own name unless they are the owner of the property they are advertising for sale, rent, lease or exchange, and on which no brokerage fees are to be paid.

193E—1.9(543B) Licensee acting as principal. Rescinded IAB 9/11/96, effective 10/16/96. [See 193E—1.40(543B).]

193E—1.10 to 1.14 Reserved.

193E—1.15(543B) Lotteries prohibited. Lotteries and schemes of sales involving selling of certificates, chances or other devices, whereby the purchaser is to receive property to be selected in an order to be determined by chance, or by some means other than the order of prior sale, or whereby property more or less valuable will be secured according to chance, or the amount of sales made, or whereby the price will depend upon chance, or the amount of sales made, whereby the buyer may or may not receive any property, are declared to be methods by reason of which the public interests are endangered.

193E—1.16(543B) Signs on property. Placing a sign on any property offering it for sale, rent or lease without the consent of the owner shall be held as against the best interests of the general public.

193E—1.17 Rescinded, effective 11/25/87.

193E—1.18(543B) Broker required to furnish progress report. At the expiration of 30 days after an offer to buy has been made by a buyer and accepted by a seller, either party may demand and the broker shall furnish a detailed statement showing the current status of the transaction. On demand by either party the broker shall furnish a detailed current statement on 30-day intervals thereafter until the transaction is closed.

193E—1.19(543B) Enforcing a protective clause. To enforce a protective clause beyond the expiration of an exclusive listing contract, there must be a provision for the protective clause in the listing contract which establishes a definite protection period, and the broker must furnish to the owner prior to the expiration of the listing the names and addresses of persons to whom the property was presented during the active term of the listing and for whom protection is sought.

193E—1.20(543B) Terms or conditions. A licensee shall not write, prepare or otherwise use a contract containing terms or conditions that would violate real estate laws in Iowa Code chapter 543B or administrative rules in IAC 193E.

The broker shall be responsible to ensure that all preprinted documents and forms used are in compliance with this rule.

193E—1.21(543B) Part-time broker or broker associate. A broker who sponsors a salesperson during the salesperson's first year of licensure must be able to demonstrate that the broker has the time available and experience necessary to adequately supervise an inexperienced salesperson. Each actively licensed broker associate and salesperson shall be licensed under a broker. A broker associate or salesperson cannot be licensed under more than one broker during the same period of time.

193E—1.22 Rescinded, effective 4/21/82.

193E—1.23(543B) Listings. All listing agreements shall be in writing, properly identifying the property and containing all of the terms and conditions under which the property is to be sold, including the price, the commission to be paid, the signatures of all parties concerned and a definite expiration date. It shall contain no provision requiring a party signing the listing to notify the broker of the listing party's intention to cancel the listing after such definite expiration date. An exclusive agency or exclusive right to sell listing shall clearly indicate that it is such an agreement. A legible copy of every written listing agreement or other written authorization shall be given to the owner of the property by a licensee as soon as reasonably practical after the signature of the owner is obtained.

1.23(1) A real estate licensee shall not negotiate a sale, exchange, or lease of real property directly with an owner if it is known that the owner has a written unexpired contract in connection with the property which grants an exclusive right to sell to another broker, or which grants an exclusive agency to another broker.

1.23(2) Net listing prohibited. No licensee shall make or enter into a net listing agreement for the sale of real property or any interest in real property. A net listing agreement is an agreement that specifies a net sale price to be received by the owner with the excess over that price to be received by the broker as commission. The taking of a net listing shall be unprofessional conduct and shall constitute a violation of Iowa Code sections 543B.29(3) and 543B.34(8).

1.23(3) A licensee shall not negotiate or enter into a listing agreement with an owner if the licensee knows or has reason to know that the owner has a written unexpired exclusive agency or exclusive right to sell listing agreement to the property with another broker, unless the owner initiates the discussion and the licensee has not directly or indirectly solicited the discussion, in which case the licensee may negotiate and enter into a listing which will take effect after the expiration of the current listing.

1.23(4) A listing agreement may not be assigned, sold, or otherwise transferred to another broker without the express written consent of all parties to the original agreement.

193E—1.24(543B) Advertising. A broker shall not advertise to sell, buy, exchange, rent, or lease property in a manner indicating that the offer to sell, buy, exchange, rent, or lease the property is being made by a private party not engaged in the real estate business, and no real estate advertisement shall show only a post office box number, telephone number or street address. Every broker, when advertising real estate, shall use the regular business name or the name under which the broker is licensed, and shall affirmatively and unmistakably indicate that the party is a real estate broker and not a private party. Each broker when operating under a franchise or trade name other than the broker's own name may license the franchise or trade name with the commission, or shall clearly reveal in all advertising that the broker is the licensed individual who owns the entity using the franchise or trade name.

1.24(1) Real estate advertising shall not be misleading, deceptive, or intentionally misrepresent any property, terms, values, or policies and services of the brokerage.

1.24(2) All advertising shall be conducted under the supervision of the broker. The broker shall ensure the accuracy of the information and upon becoming aware of a material error or an advertisement which is in violation of this chapter or Iowa Code chapter 543B, the broker shall promptly take corrective measures within ten calendar days.

1.24(3) A licensed firm advertising or marketing on a site on the Internet, that is either owned by or controlled by the licensed firm, must include on each page of the site on which the firm's advertisement or information appears the following data:

- a. The firm's name as registered with the commission (abbreviations are not permitted);
- b. The city and state in which the firm's main office is located; and
- c. The states in which the firm holds a real estate brokerage license.

1.24(4) A licensee advertising or marketing on a site on the Internet, that is either owned by or controlled by the licensee, must include on each page of the site on which the licensee's advertisement or information appears the following data:

- a. The licensee's name;
- b. The name of the firm with which the licensee is affiliated as that firm name is registered with the commission (abbreviations are not permitted);
- c. The city and state in which the licensee's office is located; and
- d. The states in which the licensee holds a real estate broker or salesperson license.

1.24(5) A firm using any Internet electronic communication for advertising or marketing, including but not limited to E-mail, E-mail discussion groups, and bulletin boards, must include on the first or last page of all communications the following data:

- a. The firm's name as registered with the commission (abbreviations are not permitted);
- b. The city and state in which the firm's main office is located; and
- c. The states in which the firm holds a real estate brokerage license.

1.24(6) A licensee using any Internet electronic communication for advertising or marketing, including but not limited to E-mail, E-mail discussion groups, and bulletin boards, must include on the first or last page of all communications the following data:

- a. The licensee's name;
- b. The name of the firm with which the licensee is affiliated as that firm name is registered with the commission (abbreviations are not permitted);
- c. The city and state in which the licensee's office is located; and
- d. The states in which the licensee holds a real estate broker or salesperson license.

1.24(7) Advertising shall include all forms of identification, representation, promotion and solicitation disseminated in any manner and by any means of communication to the public for any purpose related to licensed real estate activity.

193E—1.25 Rescinded, effective 11/25/87.

193E—1.26(543B) Presenting purchase agreements. Any and all offers to purchase received by any broker shall be promptly presented to the seller for formal acceptance or rejection. The formal acceptance or rejection of the offers shall be promptly communicated to the prospective purchasers.

193E—1.27(543B) Trust account. All earnest payments, all rents collected, property management funds, and other trust funds received by the broker in such capacity or broker associate or salesperson on behalf of the broker's client, shall be deposited in a trust account maintained by the broker in an identified "trust" account in a federally insured bank, savings and loan association, savings bank, or credit union located in Iowa and, for the purposes of this rule, may be referred to as the "depository."

1.27(1) All money belonging to others received by the broker, broker-associate or salesperson on the sale, rental, purchase, or exchange of real property located in Iowa are trust funds and must be deposited in a trust account; this shall include, but not be limited to, receipts from property management contracts; rent or lease contracts; advance fee contracts; escrow contracts; collection contracts; earnest money contracts; or money received by a broker for future investment or other purpose; except a non-refundable retainer need not be placed in an escrow account if specifically provided for in the written agreement between the broker and the broker's principal.

a. All trust funds must be deposited into the broker's trust account by no later than five banking days after the date indicated on the document that the last signature of acceptance of the offer to purchase, rent, lease, exchange, or option is obtained.

b. Money belonging to others shall not be invested in any type of fixed-term maturity account, security or certificate without the written consent of the party or parties to whom the money belongs.

c. A broker shall not commingle personal funds in a trust account; provided, however, that not more than \$100, or the amount specified in Iowa Code section 543B.46(4), of the broker's personal funds may be maintained in each separate account if (1) such personal funds are separately accounted for and (2) such personal funds are intended to be used by the broker to pay for expenses directly related to maintaining the account.

The broker shall ensure that personal funds are deposited to cover bank service charges as specified in Iowa Code section 543B.46, and that at no time are trust moneys used to cover any charges. Upon notification that the broker's personal funds are not sufficient to cover service charges initiated by the bank that are above the normal maintenance charges, the broker shall deposit personal funds to correct the deficiency within 15 days of the closing date of that bank statement.

d. Money held in the trust account which becomes due and payable to the broker shall be promptly withdrawn by the broker.

The broker shall not use the trust account as a business operating account or for personal uses. Commissions, salaries, related items and normal business expenses shall not be disbursed directly from the trust account.