

REAL ESTATE APPRAISER EXAMINING BOARD[193F]

Adopted and Filed

Rulemaking related to investigations and disciplinary procedures

The Real Estate Appraiser Examining Board hereby adopts new Chapter 7, “Investigations and Disciplinary Procedures,” and rescinds Chapter 8, “Investigations and Disciplinary Procedures,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 543D.5.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 543D and Executive Order 10 (January 10, 2023).

Purpose and Summary

Chapter 7 establishes the provisions for investigatory and disciplinary procedures over which the Board has authority. The benefit is to clearly specify to all parties their rights and responsibilities during the investigation and discipline process.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on January 24, 2024, as **ARC 7264C**. Public hearings were held on February 13, 2024, and February 14, 2024, at 10:40 a.m. at 6200 Park Avenue, Des Moines, Iowa, and virtually. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Board on March 19, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department of Inspections, Appeals, and Licensing for a waiver of the discretionary provisions, if any, pursuant to 481—Chapter 6.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on May 22, 2024.

The following rulemaking action is adopted:

ITEM 1. Adopt the following new 193F—Chapter 7:

CHAPTER 7
INVESTIGATIONS AND DISCIPLINARY PROCEDURES

193F—7.1(272C,543D) Disciplinary action. The real estate appraiser examining board has authority under applicable law to impose discipline for violations of law.

193F—7.2(17A,272C,543D) Initiation of disciplinary investigations. The board may initiate a licensee disciplinary investigation upon the board’s receipt of information suggesting that a licensee may have violated the licensee’s legal obligations under the Iowa Code or board rule.

193F—7.3(17A,272C,543D) Conflict of interest. If the subject of a complaint is a member of the board, or if a member of the board has a conflict of interest in any disciplinary matter before the board, that member will abstain from participation in any consideration of the complaint and from participation in any disciplinary hearing that may result from the complaint.

193F—7.4(272C,543D) Complaints. Written complaints need to be submitted to the board through the board’s online system. The board may also initiate its own complaints.

7.4(1) Role of complainant. The role of the complainant in the disciplinary process is limited to providing the board with factual information relative to the complaint. A complainant is not party to any disciplinary proceeding which may be initiated by the board based in whole or in part on information provided by the complainant.

7.4(2) Role of the board. The board does not act as an arbiter of disputes between private parties, nor does the board initiate disciplinary proceedings to advance the private interest of any person or party. The role of the board in the disciplinary process is to protect the public by investigating complaints and initiating disciplinary proceedings in appropriate cases. The board possesses sole decision-making authority throughout the disciplinary process, including the authority to determine whether a case will be investigated, the manner of the investigation, whether a disciplinary proceeding will be initiated, and the appropriate licensee discipline to be imposed, if any.

7.4(3) Initial complaint screening. Tips that are not complaints will be evaluated by the disciplinary committee but may not be assigned a case number or further investigated. Complaints that have been submitted and assigned a case number will be referred to the discipline committee. Final decisions on complaints will be made by the board.

193F—7.5(272C,543D) Case numbers. Whether based on written complaint received by the board or complaint initiated by the board, all complaint files will be tracked by a case numbering system. Once a case file number is assigned to a complaint, all persons communicating with the board regarding that complaint are encouraged to include the case file number to facilitate accurate records and prompt response.

193F—7.6(17A,272C,543D) Investigation procedures.

7.6(1) Disciplinary committee. The board chairperson will annually appoint two to three members of the board to serve on the board’s disciplinary committee. The disciplinary committee is a purely advisory body that reviews complaint files referred by the board’s executive officer, generally supervises the investigation of complaints, and makes recommendations to the full board on the disposition of complaints. Members of the committee will not personally investigate complaints, but they may review the investigative work product of others in formulating recommendations to the board.

7.6(2) Screening of complaints. All complaints presented to the board will be screened, evaluated and, where appropriate, investigated.

193F—7.7(17A,272C,543D) Informal discussion. If the disciplinary committee considers it advisable, or if requested by the affected licensee, the committee may grant the licensee any opportunity to appear before the committee for a voluntary informal discussion of the facts and circumstances of an alleged violation, subject to the provisions of this rule.

7.7(1) Because disciplinary investigations are confidential, only the licensee’s legal representative may attend the information discussion with the board.

7.7(2) Unless disqualification is waived by the licensee, board members or staff who personally investigate a disciplinary complaint are disqualified from making decisions or assisting the decision makers at a later formal hearing. Because board members generally rely upon investigators, peer review committees, or expert consultants to conduct investigations, the issue rarely arises. An informal discussion, however, is a form of investigation because it is conducted in a question and answer format. In order to preserve the ability of all board members to participate in board decision making and to receive the advice of staff, licensees who desire to attend an informal discussion waive their right to seek disqualification of a board member or staff based solely on the board member’s or staff’s participation in an informal discussion. Licensees would not be waiving their right to seek disqualification on any other ground. By electing to attend an informal discussion, a licensee accordingly agrees that participating board members or staff are not disqualified from acting as a presiding officer in a later contested case proceeding or from advising the decision maker.

7.7(3) Because an informal discussion constitutes a part of the board’s investigation of a pending disciplinary case, the facts discussed at the informal discussion may be considered by the board in the event the matter proceeds to a contested case hearing and those facts are independently introduced into evidence.

7.7(4) The disciplinary committee, subject to board approval, may propose a consent order at the time of the informal discussion.

193F—7.8(272C,543D) Peer review committee (PRC). A peer review committee may be appointed by the board to investigate a complaint.

193F—7.9(17A,272C,543D) Closing complaint files.

7.9(1) Grounds for closing. The board may close a complaint file, with or without prior investigation.

7.9(2) Cautionary letters. The board may issue a confidential letter of caution to a licensee when a complaint file is closed that informally cautions or educates the licensee about matters that could form the basis for disciplinary action in the future if corrective action is not taken by the licensee. Informal cautionary letters do not constitute disciplinary action, but the board may take such letters into consideration in the future if a licensee continues a practice about which the licensee has been cautioned.

7.9(3) Reopening closed complaint files. The board may reopen a closed complaint file if additional information arises after closure that provides a basis to reassess the merits of the initial complaint. Complaint files may also be reopened when a complaint has been previously closed due to the lapse of the licensee’s license.

193F—7.10(17A,272C,543D) Initiation of disciplinary proceedings. Disciplinary proceedings may only be initiated by the affirmative vote of a majority of a quorum of the board at a public meeting. Board members who are disqualified will not be included in determining whether a quorum exists. If, for example, two members of the board are disqualified, three members of the board constitute a quorum of the remaining five board members for purposes of voting on the case in which the two members are disqualified. When three or more members of the board are disqualified or otherwise unavailable for any reason, the executive officer may request the special appointment of one or more substitute board members pursuant to Iowa Code section 17A.11(5).

193F—7.11(543D) Decisions. The board will make findings of fact and conclusions of law, and set forth the board’s decision, order, or both in the case. The board’s decision may include, without limitation, any of the following outcomes, either individually or in combination:

1. Dismissing the charges;
2. Suspending or revoking the appraiser’s certification or associate’s registration as authorized by law;
3. Imposing civil penalties, the amount to be set at the discretion of the board but not exceeding \$1,000 per violation. Civil penalties may be imposed for any of the disciplinary violations specified in Iowa Code section 543D.17 and chapter 272C or for any repeat offenses;
4. Imposing a period of probation, either with or without conditions;
5. Obligating the licensee to undergo reexamination;
6. Obligating the licensee to take additional professional education, reeducation, or continuing education;
7. Issuing a citation and a warning;
8. Imposing desk review of the appraiser’s work product;
9. Issuing a consent order either with or without conditions;
10. Imposing consultation with one or more peer reviewers;
11. Revoking an appraiser’s eligibility to supervise;
12. Compelling submission of monthly logs;
13. Placing limitations on a licensee’s practice, such as removing a licensee’s authority to act as an instructor; and
14. Imposing any other form of discipline authorized by a provision of law that the board, in its discretion, believes is warranted under the circumstances of the case.

193F—7.12(272C,543D) Mitigating and aggravating factors. Factors the board may consider when determining whether to impose discipline and what type of discipline to impose include but are not limited to:

- 7.12(1) History and background of respondent.**
 - a. Whether the respondent was a registered associate appraiser or a certified appraiser at the time of the violation.
 - b. Prior disciplinary history or cautionary letters.
 - c. Length of certification or registration at the time of the violation.
 - d. Disciplinary history of current or prior supervisor.
 - e. Degree of cooperation with investigation.
 - f. Extent of self-initiated reform or remedial action after the date of the violation.
 - g. Whether the volume or geographic range of the respondent’s practice is, or was at the time of the violation, reasonable under the circumstances.
 - h. Whether the respondent practiced with a lapsed, inactive, retired, suspended, revoked, or surrendered certificate or registration.
- 7.12(2) Nature of violations, not limited to:**
 - a. Length of time since the date of the violation.
 - b. Whether the violation is isolated or recurring.
 - c. Whether there are multiple violations or appraisals involved.
 - d. Whether the violation is in the nature of an error or situational carelessness or neglect, or reflects a more fundamental lack of familiarity with applicable appraisal methodology or standards.
 - e. Indicia of bad faith, false statements, deceptive practices, or willful and intentional acts, whether within the circumstances of the violation or in the course of the board’s investigation or disciplinary proceeding.
 - f. Evidence of improper advocacy or other violation of the USPAP ethics rule or of Iowa Code section 543D.18 or 543D.18A(1).
 - g. The clarity of the issue or standard involved.

h. Whether the respondent practiced outside the scope of practice authorized by respondent's certification or registration.

i. Whether the violation relates to the respondent's supervisory role, the respondent's individual appraisal practice, or both.

7.12(3) Interest of the public, not limited to:

a. Degree of financial or other harm to a client, consumer, lending institution, or others.

b. Risk of harm, whether or not the violation caused actual harm.

c. Economic or other benefit gained by respondent or by others as a result of the violation.

d. Deterrent impact of discipline.

e. Whether the respondent issued a corrected appraisal report when warranted.

193F—7.13(272C,543D) Voluntary surrender. The board may accept the voluntary surrender of a license to resolve a pending disciplinary contested case or pending disciplinary investigation. The board will not accept a voluntary surrender of a license to resolve a pending disciplinary investigation unless a statement of charges is filed along with the order accepting the voluntary surrender. Such voluntary surrender is considered disciplinary action and will be published in the same manner as is applicable to any other form of disciplinary order.

193F—7.14(272C,543D) Reinstatement. The following provisions apply to license reinstatement proceedings:

7.14(1) The board may grant an applicant's request to appear informally before the board prior to the issuance of a notice of hearing on an application to reinstate if the applicant requests an informal appearance in the application and agrees not to seek to disqualify, on the ground of personal investigation, board members or staff before whom the applicant appears.

7.14(2) An order granting an application for reinstatement may impose such terms and conditions as the board deems desirable, which may include one or more of the types of disciplinary sanctions described in rule 193F—7.14(272C,543D).

7.14(3) The board will not grant an application for reinstatement when the initial order that revoked, suspended or placed limitations on the license, denied license renewal, or accepted a voluntary surrender was based on a criminal conviction and the applicant cannot demonstrate to the board's satisfaction that:

a. All terms of the sentencing or other criminal order have been fully satisfied;

b. The applicant has been released from confinement and any applicable probation or parole; and

c. Restitution has been made or is reasonably in the process of being made to any victims of the crime.

7.14(4) A state and national criminal history check may be performed on any applicant applying to reinstate registration or credential consistent with Iowa Code section 543D.22.

These rules are intended to implement Iowa Code sections 543D.5, 543D.17, and 543D.18 and chapters 17A and 272C.

ITEM 2. Rescind and reserve **193F—Chapter 8**.

[Filed 3/27/24, effective 5/22/24]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/17/24.