Regulatory Analysis

Notice of Intended Action to be published: rules 193E—7.3(543B), 193E—7.4(543B), 193E—7.9(543B), and 193E—7.11(543B) through 193E—7.15(543B) "Offices and Management"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 543.18
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A and 544B

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

December 9, 2024	6200 Park Avenue
10 to 10:30 a.m.	Des Moines, Iowa

Information on virtual participation will be available on the Department of Inspections, Appeals, and Licensing's website prior to the hearing.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis, which must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Ashley Thompson
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321
Phone: 515.725.9028
Email: ashley.thompson@dia.iowa.gov

Purpose and Summary

This proposed rulemaking implements 2024 Iowa Acts, Senate File 2291. Chapter 7 sets forth supporting guidance for agency brokerage agreements and negotiation compensation for real estate licensees. These amendments also update language to be consistent with Senate File 2291.

In addition, this proposed rulemaking implements 2024 Iowa Acts, House File 2394, and the regulation of wholesaling.

Analysis of Impact

1. **Persons affected by the proposed rulemaking:**

- **Classes of persons that will bear the costs of the proposed rulemaking:**

Licensees will be affected by Senate File 2291 and the supporting rules since agency agreements are now required for all clients, including buyers, prior to agency representation. Licensees will also be able to negotiate compensation on the purchase agreements. Licensees may lose potential revenue by having to require a buyer agency agreement prior to providing any representation.

- **Classes of persons that will benefit from the proposed rulemaking:**

The purpose of Senate File 2291 is to protect buyers from having to pay fixed compensation fees and from risks that may arise from not having a buyer agency agreement.

2. **Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:**

- **Quantitative description of impact:**

Licensees may lose revenue due to having to procure a buyer agency agreement prior to providing agency services.

Unlicensed individuals may lose revenue due to having to either procure a broker's license to perform wholesaling or procure an Iowa licensed broker to facilitate the wholesaling transaction.

- **Qualitative description of impact:**

Licensees will be able to protect themselves from losing buyers to another agent by having a buyer agency agreement.

3. **Costs to the State:**

- **Implementation and enforcement costs borne by the agency or any other agency:**

Costs to the agency are for the staff time needed to manage licensee and public inquiries, rulemaking and investigations. The time needed to manage this provision is generally in the form of responding to questions related to new law and rule changes as well as the complaints being submitted regarding the changes. The Real Estate Commission utilizes 1.0 full-time equivalent (FTE) position to respond to inquiries, complete the rulemaking process, and handle complaints where discipline is imposed and 1.0 FTE position to investigate and process complaints relating to new laws and rules. Those staff work for other boards under the Department as well. Staff salaries to support the work of the Commission are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go into the fund to cover the costs of the Commission's regulations.

- **Anticipated effect on state revenues:**

There are no anticipated effects on state revenues related to the proposed amendments. Staff salaries to support the work of the license are covered by the fund.

4. **Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:**

Licensees will be affected by Senate File 2291 and the supporting rules since buyer agency agreements are now required prior to agency representation. Licensees will also be able to negotiate compensation on the purchase agreements. Licensees may lose potential revenue by having to require a buyer agency agreement prior to providing any representation.

5. **Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:**

There are no less costly methods to consider.

6. **Alternative methods considered by the agency:**

- **Description of any alternative methods that were seriously considered by the agency:**

There were not any alternative methods considered.

- **Reasons why alternative methods were rejected in favor of the proposed rulemaking:**

There were not any alternative methods considered, and rulemaking is required to bring the Commission into compliance with Senate File 2291.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.

- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Small real estate businesses may be affected by Senate File 2291 and the supporting rules since buyer agency agreements are now required prior to agency representation and by being able to negotiate compensation on the purchase agreements. Licensees may lose potential revenue by having to require a buyer agency agreement prior to providing any representation.

Text of Proposed Rulemaking

ITEM 1. Amend subrule 7.3(4) as follows:

7.3(4) All ~~listings~~ brokerage and property management agreements are canceled by the broker whose license is suspended or revoked upon receipt of the order of revocation or suspension and prior to the effective date of the order.

a. The seller or landlord, or buyer or tenant, are advised that the seller or landlord, or buyer or tenant, may enter into a ~~listing or~~ brokerage agreement with another broker of choice.

b. A broker whose license is suspended or revoked cannot sell or assign ~~listings~~ brokerage or management agreements to another broker without the written consent of the ~~owner of the property~~ client, and any sale or assignment of ~~listings~~ brokerage or management agreements are completed prior to the effective date of the order.

ITEM 2. Amend subrule 7.4(3) as follows:

7.4(3) An arrangement in which a real estate licensee, in connection with the sale of a lot to a consumer or homebuilder, obligates the consumer or homebuilder to pay ~~a commission~~ compensation on the value of the house to be constructed on the lot.

ITEM 3. Amend subrule 7.4(6) as follows:

7.4(6) Any arrangement in which a real estate licensee enters into an agreement with a mortgage broker, bank, savings and loan, or other financial institution pursuant to which the making of a loan is directly or indirectly conditioned upon payment of ~~a real estate commission~~ compensation to the real estate licensee.

ITEM 4. Amend paragraph **7.9(1)"c"** as follows:

c. An affiliated business arrangement does not include an arrangement in which a real estate licensee, or an associate of a real estate licensee, gives or pays ~~an~~ undisclosed ~~commission~~ compensation in a transaction to any other licensee for a referral to provide real estate brokerage services, including franchise affiliates, if there is no direct or beneficial ownership interest of more than 1 percent in the business entity providing the service. Referral fees or ~~commissions~~ compensation paid by a licensee to another licensee under these conditions are exempted from the disclosure criteria.

ITEM 5. Amend paragraph **7.11(2)"b"** as follows:

b. While this rule does not obligate that a licensee list property owned by the licensee with the employing or affiliated broker, the broker may obligate as a condition of employment or affiliation that the licensee list the property with the employing or affiliated broker or pay ~~a~~ ~~commission~~ compensation.

ITEM 6. Amend rule 193E—7.12(543B) as follows:

193E—7.12(543B) ~~Commission~~ Compensation controversies. The commission will not and is not authorized by law to consider or conduct hearings involving disputes over fees or ~~commissions~~ compensation between cooperating brokers, salespersons, and other brokers.

7.12(1) A former employing or affiliated broker may pay ~~a commission~~ compensation directly to a broker associate or salesperson who is presently assigned to another broker or firm, or whose license is inactive, expired, suspended or revoked, only if the ~~commission~~ compensation was earned while the broker associate or salesperson was actively licensed and assigned to the former broker. Whether or not ~~a commission~~ compensation was earned while the broker associate or salesperson was licensed with the former broker depends upon the licensee's written agreement with the former broker. The commission will not determine whether ~~a commission~~ compensation is earned or whether ~~a commission~~ compensation is to be paid.

7.12(2) If the licensee is presently assigned to another broker or firm, the former broker does not pay the ~~commission~~ compensation to the new employing or affiliated broker or firm.

7.12(3) An Iowa real estate broker may pay ~~a commission~~ compensation or a fee to or receive ~~a commission~~ compensation or a fee from a nonresident broker who is actively licensed in the broker's resident state but not licensed in Iowa. The nonresident broker takes no part in the listing, showing, negotiating offers or any other functions of a broker in Iowa unless actively licensed in Iowa.

7.12(4) No change.

ITEM 7. Amend rule 193E—7.13(543B) as follows:

193E—7.13(543B) Support personnel for licensees; permitted and barred 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~~ designated broker and the affiliated licensee are responsible for supervising the acts or activities of the support personnel; however, the affiliated licensee has the primary responsibility for supervision subject to Iowa Code section 543B.7A. Unless the support person holds a real estate license, the support person cannot 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 need discretion or the exercise of the licensee's own judgment. Personal assistants are considered support personnel.

7.13(1) and **7.13(2)** No change.

7.13(3) Broker supervision and improper use of license and office. While individual and designated brokers are responsible for supervising the real estate-related activities of all support personnel, an affiliated licensee employing a personal assistant has the primary responsibility for supervision of that personal assistant. A broker is not held responsible for inadequate supervision if:

a. The unlicensed person violated a provision of Iowa Code chapter 543B or of commission rules that is in conflict with the ~~supervising~~ designated broker's specific written policies or instructions;

b. to *e.* No change.

7.13(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 may not perform.

a. Permitted activities include~~,~~ but are not limited to~~,~~ the following:

(1)	Answer the telephone, provide information about a listing to 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~~ designated broker;

(8)	Place advertisements in magazines, newspapers, websites, social media, and other media as directed by the ~~supervising~~ designated broker;
(9)	Record and deposit earnest money, security deposits, and advance rents, and perform other bookkeeping duties;
(10)	Type contract forms as directed by the licensee or the ~~supervising~~ designated broker;
(11)	Monitor personnel files;
(12)	Compute ~~commission~~ compensation 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 obligated 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 answer any questions pertaining to the material aspects of the house or its price and terms~~.~~;
(22)	Independently host open houses for tours attended by licensed brokers and salespersons only~~.~~;
(23)	Advertise and list property for rent;
(24)	Show property for rent;
(25)	Collect rent and deposits for the rental of property; or
(26)	Complete and execute form agreements for the rental of property.

b. Barred 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, or exchanges~~, or property management~~;
(2)	Independently hosting open houses, kiosks, home show booths, or fairs attended by the public;
(3)	Preparing promotion materials or advertisements without the review and approval of licensee and ~~supervising~~ designated broker;
(4)	Showing property for sale 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~~ compensation, management fee, or referral fee on behalf of a licensee, seller, or buyer with another licensee, client, or customer;
(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, or 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.

ITEM 8. Amend rule 193E—7.14(543B) as follows:

193E—7.14(543B) Information provided by nonlicensed support personnel limited. 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 provides information only to another licensee that has been provided to the personnel by the employer licensee either verbally or in writing.

ITEM 9. Amend subrule 7.15(3) as follows:

7.15(3) A ~~customer's~~ client's agent or representative cannot negotiate directly or indirectly with a seller or buyer, or landlord or tenant, if the agent knows, or acting in a reasonable manner should have known, that the seller or buyer, or landlord or tenant, has a written unexpired ~~listing or~~ brokerage agreement for services on an exclusive basis.

ITEM 10. Amend subrule 7.15(4) as follows:

7.15(4) A listing agent cannot refuse to permit a ~~customer's~~ client's agent or representative to be present at any step in a real estate transaction, including~~,~~ but not limited to~~,~~ viewing a property, seeking information about a property, or negotiating directly or indirectly with an agent about a property listed by such agent~~;~~, and ~~no~~ an agent ~~refuses~~ cannot refuse to show a property listed by that agent or otherwise deal with a represented ~~customer~~ client who requests that the ~~customer's~~ client's agent or representative be present at any step in the real estate transaction, except as provided in this subrule.

a. The ~~customer's~~ client's agent or representative does not have the right to be present at any discussion of confidential matters or evaluation of the offer by the seller and the listing agent.

b. Unless the seller provides written instructions to the listing agent to exclude a ~~customer's~~ client's agent or representative from being present when the offer is presented, it is not unlawful for the ~~customer's~~ client's agent or representative to be present.

c. Compliance with this rule does not need or obligate a listing broker to ~~share~~ split any ~~commission~~ compensation or to otherwise compensate a ~~customer's~~ client's agent.