Regulatory Analysis

Notice of Intended Action to be published: 193E—10.1(543B)
"Advertising"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 543B.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:

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Des Moines, Iowa 50321
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Purpose and Summary

This proposed rulemaking complies with 2024 Iowa Acts, House File 2326. The amendments set forth supporting guidance to licensees regarding their advertising and supporting guidance to real estate teams regarding advertising and licensing.

Analysis of Impact

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

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

Licensees may incur additional costs to adhere to the proposed rules by updating websites, business cards, signs, and other marketing tools.

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

The purpose of the proposed amendments is to provide additional guidance regarding advertising. Licensees will benefit from these rules as they will have additional guidance to help them comply with advertising requirements and avoid receiving discipline from the Real Estate Commission. The public will benefit from the proposed amendments because they will be able to easily identify a licensee, the licensee's team and the licensee's brokerage.

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 update their advertising; however, this loss will be minimal and affect very few licensees.

- **Qualitative description of impact:**

This chapter makes advertising easier to understand for both licensees and the public.

3. **Costs to the State:**

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

Costs to the agency are 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 complaints being submitted regarding the changes. The commission utilizes one full-time equivalent (FTE) position to respond to inquiries, complete the rulemaking process, and handle complaints where discipline is imposed. One additional FTE position investigates and processes complaints relating to new laws and rules. Those two FTE positions work for other boards under the Commission as well. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund. Licensing fees go into the fund to cover the costs of the Board regulations.

- **Anticipated effect on state revenues:**

There is no anticipated effect on state revenues for the proposed changes. Staff salaries to support the work of the Commission 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 2024 Iowa Acts, Senate File 2291 and the supporting rules because agency buyer agreements are now required prior to agency representation, as is being able to negotiate compensation on 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 no alternative methods considered.

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

There were no alternative methods considered. This proposed rulemaking is required to bring the Commission into compliance with 2024 Iowa Acts, 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?

A small real estate business may be affected by Senate File 2291 and the supporting rules because agency buyer agreements are now required prior to agency representation, as is being able to negotiate compensation on 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 rule 193E—10.1(543B), introductory paragraph, as follows:

193E—10.1(543B) Advertising. A broker cannot advertise to sell, buy, exchange, rent, or lease property in a manner indicating that the offer is being made by a private party not engaged in the real estate business, and no real estate advertisement can show only a post office box number, telephone number or street address. Every licensee, when advertising real estate, will use the licensed business name or the name under which the broker is licensed, and affirmatively and unmistakably indicate that the party is a real estate licensee 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 clearly reveal in all advertising that the broker is the licensed individual who owns the entity using the franchise or trade name. An individual licensee or real estate team that is not a principal broker or firm is not required to register a trade name. An individual licensee or real estate team shall conspicuously display the name of the brokerage immediately preceding or immediately following the individual licensee's name or real estate team name in any advertising or information made available to the public. For purposes of this rule, "conspicuously display" shall mean advertisement that, when presented, a reasonable person would be able to identify or observe.

ITEM 2. Amend paragraph **10.1(4)"a"** as follows:

a. ~~The~~ Conspicuously display, in a font size that is readable to a reasonably prudent person, the firm or tradename as registered with the commission (abbreviations are not permitted) immediately preceding or immediately following the individual licensee's name or real estate team name;

ITEM 3. Amend paragraph **10.1(5)"b"** as follows:

b. ~~The~~ Conspicuously display the name of the firm or trade name with which the licensee is affiliated as that firm name is registered with the commission (abbreviations are not permitted) immediately preceding or immediately following the individual licensee's name or real estate team name;