Regulatory Analysis

Notice of Intended Action to be published: 193E—Chapter 11
"Brokerage Agreements"

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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Purpose and Summary

This proposed rulemaking complies with 2024 Iowa Acts, Senate File 2291. The amendments set forth supporting guidance regarding agency brokerage agreements and negotiation compensation for real estate licensees. These amended rules also update language to be in alignment with Senate File 2291.

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 because agency buyer agreements are now required prior to agency representation, as is 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.

- **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 buyers agency agreement prior to providing agency services.

Unlicensed individuals may lose revenue due to having to procure either a broker's license to perform wholesaling or 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:**

A cost to the agency is 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; and one other FTE position to investigate and process complaints relating to new laws and rules. Those two FTE positions work for other boards under the Real Estate Commission as well. Staff salaries to support the work of the Commission are covered by the Licensing and Regulation Fund. Licensing fees go into the fund to cover the costs of the Commission regulations.

- **Anticipated effect on state revenues:**

There is no anticipated effect on state revenues for the proposed definition 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 Senate File 2291 and the supporting rules as agency buyer agreements are now required prior to agency representation, as is 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.

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

No less costly methods were considered.

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

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

No alternative methods were considered.

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

No alternative methods were considered. This 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?

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 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 rule 193E—11.1(543B) as follows:

193E—11.1(543B) ~~Listing brokerage~~ Brokerage agreements. All ~~listing~~ brokerage agreements ~~are~~ will 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~~ amount of compensation to be paid with disclosure that states compensation is negotiable and not set by law, the signatures of all parties concerned and a definite expiration date not to exceed one calendar year in length from the effective date, for properties with at least one, but not more than four dwelling units. ~~The agreement contains 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~~ brokerage agreement or exclusive right to sell ~~listing~~ agreement clearly indicates that it is such an agreement. A legible copy of every written ~~listing~~ brokerage agreement or other written authorization is given to the ~~owner of the property~~ client by a licensee as soon as the signature of the ~~owner~~ client is obtained.

1. A listing agreement should properly identify the property and contain the terms and conditions under which the property is to be sold, including but not limited to the list price and any compensation to be earned from the sale of the property.

2. A buyer representation agreement is required for all properties. Open houses or auctions are exempt from usage of a buyer representation agreement.

11.1(1) A licensee cannot solicit or enter into a ~~listing or~~ brokerage agreement with ~~an owner~~ a buyer or seller if the licensee knows or has reason to know that the ~~owner~~ buyer or seller has a written unexpired exclusive ~~agency~~ brokerage agreement or exclusive right to sell listing agreement to the property with another broker, unless the ~~owner~~ buyer or seller initiates the discussion and the licensee has not directly or indirectly solicited the ~~listing or~~ brokerage agreement.

a. However, if the ~~owner~~ buyer or seller initiates the discussion, the licensee may negotiate and enter into a ~~listing or~~ brokerage agreement that will take effect after the expiration of the current ~~listing~~ brokerage agreement.

b. If the ~~owner~~ buyer or seller initiates the discussion, the licensee may inform the ~~owner~~ buyer or seller that the ~~owner~~ buyer or seller needs to allow the current ~~listing~~ brokerage agreement to expire or obtain a mutually acceptable cancellation from the ~~listing~~ broker before any further discussion can take place.

11.1(2) A real estate licensee cannot negotiate a sale, exchange, or lease of real property directly with ~~an owner~~ a seller if it is known that the ~~owner~~ seller 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~~.

11.1(3) A real estate licensee cannot negotiate a sale, purchase, exchange, or lease of real property directly with a buyer or seller if it is known that the buyer or seller has a written unexpired exclusive brokerage agreement with another broker.

~~**11.1(3)**~~ **11.1(4)** ~~A listing agreement cannot be assigned, sold, or otherwise transferred to another broker without the express written consent of all parties to the original agreement.~~ All brokerage agreements are written and cannot be assigned, sold, or otherwise transferred to another broker without the express written consent of all parties to the original agreement, unless the terms of the agreement state otherwise. Upon termination of association or employment with the principal broker,

the affiliated broker associate or salesperson cannot solicit, take, or use any written brokerage agreements secured during the association or employment. Said brokerage agreements remain the property of the principal broker and may be canceled only by the broker and the client.

~~11.1(4)~~ 11.1(5) Net listing barred. No licensee makes or enters 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~~ compensation. The taking of a net listing is unprofessional conduct and constitutes a violation of Iowa Code sections 543B.29(3) and 543B.34(8).

ITEM 2. Rescind rule **193E—11.2(543B)**.

ITEM 3. Renumber rules **193E—11.3(543B)** to **193E—11.5(543B)** as **193E—11.2(543B)** to **193E—11.4(543B)**.

ITEM 4. Amend renumbered rule 193E—11.2(543B) as follows:

193E—11.2(543B) ~~Brokerage agreements~~ Cooperation, compensation, and compliance. ~~All brokerage agreements are written and cannot be assigned, sold, or otherwise transferred to another broker without the express written consent of all parties to the original agreement, unless the terms of the agreement state otherwise. Upon termination of association or employment with the principal broker, the affiliated broker associate or salesperson cannot take or use any written brokerage agreements secured during the association or employment. Said brokerage agreements remain the property of the principal broker and may be canceled only by the broker and the client.~~

11.2(1) Every written brokerage agreement includes, at a minimum, the criteria set forth in Iowa Code section ~~543B.57~~ 543B.56A and the following provisions:

a. ~~All brokerage~~ Brokerage agreements will contain a statement disclosing the brokerage policy on cooperating with and compensating other brokerages or the other parties' agent in the sale, lease, rental, or purchase of real estate, including whether the brokerage intends to ~~share~~ split the compensation with other brokerages and any other method for negotiating compensation for another party's broker. Such disclosure serves to inform the client of any policy that would limit the participation of any other brokerage; and

b. All ~~listing contracts and all~~ brokerage ~~agency contracts~~ agreements comply with Iowa real estate law and commission rules, including, but not limited to, rules 193E—11.1(543B) and 193E—11.4(543B) and 193E—Chapter 15.

~~**11.2(2)** No licensee makes or enters into a brokerage agreement that specifies a net sale, lease, rental, or exchange price to be received by an owner and the excess to be received by the licensee as a commission.~~

~~**11.2(3)** The taking of a net brokerage agreement is unprofessional conduct and a practice that is harmful or detrimental to the public and constitutes a violation of Iowa Code sections 543B.29(3) and 543B.34(8).~~

~~11.2(4)~~ 11.2(2) Duration of relationship. The relationships commence at the time of the brokerage agreement and continue until closing of the transaction or performance or completion of the agreement by which the broker was engaged within the term of the agreement and not exceeding 12 months. If the transaction does not close, or the agreement for which the broker was engaged is not performed or completed for any reason, the relationship ends at the earlier of the following:

a. ~~Any~~ The date of expiration agreed upon by the parties; or

b. Any termination by written agreement of the parties.

~~11.2(5)~~ 11.2(3) Obligation terminated. In addition to any continuing duty or obligation provided in the written agreement or pursuant to Iowa law and commission rules, a broker or brokerage engaged as a seller's or landlord's agent, buyer's or tenant's agent, ~~subagent,~~ or dual agent and affiliated licensees have the duty after termination, expiration, completion, or performance of the brokerage agreement to:

a. and *b.* No change.

~~11.2(6)~~ 11.2(4) Compensation. In any real estate transaction, the broker's compensation may be paid by the seller, the buyer, the landlord, the tenant, a third party, ~~or the sharing~~ or splitting of ~~a commission or~~ compensation between brokers.

a. No change.

b. Written permission of the client is needed as follows:

(1) A seller's or landlord's agent may ~~share the commission or other~~ split compensation paid by such seller or landlord with another broker, with the written consent of the seller or landlord.

(2) A buyer's or tenant's agent may ~~share the commission or other~~ split compensation paid by such buyer or tenant with another broker, with the written consent of the buyer or tenant.

(3) Without the written approval of the client, a seller's or landlord's agent cannot propose to the buyer's or tenant's agent that such seller's or landlord's agent may be compensated by ~~sharing~~ splitting compensation paid by such buyer or tenant.

(4) Without the written approval of the client, a buyer's or tenant's agent cannot propose to the seller's or landlord's agent that such buyer's or tenant's agent may be compensated by ~~sharing~~ splitting compensation paid by such seller or landlord.

c. No change.

d. A licensee cannot accept, receive or charge an undisclosed ~~commission~~ compensation for a transaction.

e. A licensee cannot give or pay an undisclosed ~~commission~~ compensation to any other licensee for a transaction, except payment for referrals to other licensees, including franchise affiliates, to provide real estate brokerage services, if there is no direct or beneficial ownership interest of more than 1 percent in the business entity providing the service.

f. No change.

g. A licensee cannot give any undisclosed credit against ~~commission~~ compensation due from a client or licensee to any party to a transaction.

h. A licensee cannot accept, receive or charge any undisclosed payments for any services provided by any third party to any party to a transaction including~~,~~ but not limited to~~,~~ payments for procuring insurance or for conducting a property inspection related to the transaction.

i. to *k.* No change.

~~**11.2(7)** Solicitation of brokerage agreements. A licensee cannot advise, counsel, or solicit a brokerage agreement from a seller or buyer, or landlord or tenant, if the licensee knows, or acting in a reasonable manner should have known, that the seller or buyer, or landlord or tenant, has contracted with another broker for the same brokerage services on an exclusive basis.~~

~~*a.* This rule does not preclude a broker from entering into a brokerage agreement with a seller or buyer, or landlord or tenant, when the initial contact is initiated by the seller or buyer, or landlord or tenant, and the licensee has not directly or indirectly solicited the discussion, provided the brokerage agreement does not become effective until the expiration or release of the current brokerage agreement.~~

~~*b.* A brokerage agreement cannot be assigned, sold, or otherwise transferred to another broker without the express written consent of all parties to the original agreement.~~

~~11.2(8)~~ 11.2(5) Any ~~commission~~ compensation or fee in any brokerage agreement is fully negotiable among the parties to that brokerage agreement. Once the parties to a brokerage agreement have agreed to a ~~commission~~ compensation or fee, no licensee other than a party to that brokerage agreement attempts to alter, modify, or change or induce another person to alter, modify, or change a ~~commission~~ compensation or fee that has previously been agreed upon without the prior written consent of the parties to that brokerage agreement.

~~11.2(9)~~ 11.2(6) The seller or landlord may, in the brokerage agreement, authorize the seller's or landlord's broker to disburse part of the broker's compensation to other brokers, including a buyer's or tenant's broker solely representing the buyer or tenant.

~~11.2(10)~~ 11.2(7) Nothing contained in this rule shall obligate any buyer or tenant or seller or landlord to pay compensation to a licensee representing the buyer or tenant or seller or landlord in a

real estate transaction unless the buyer or tenant or seller or landlord has entered into a written brokerage agreement with the broker specifying the compensation terms and conditions, in accordance with Iowa real estate license law and commission rules.

ITEM 5. Amend renumbered rule 193E—11.3(543B) as follows:

193E—11.3(543B) Terms or conditions. A licensee cannot write, prepare or otherwise use a contract containing terms or conditions that would violate real estate laws in Iowa Code chapter 543B or commission rules. The broker is responsible to ensure that all preprinted documents and forms used are in compliance with these rules.

~~The broker is responsible to ensure that all preprinted documents and forms used are in compliance with these rules.~~

ITEM 6. Adopt the following **new** rule 193E—11.5(543B):

193E—11.5(543B) Enforcing a protective clause. To enforce a protective clause beyond the expiration of an exclusive brokerage agreement, there must be a provision for the protective clause in the brokerage agreement that establishes a definite protection period. In writing and prior to the expiration of the brokerage agreement, the broker furnishes to the party the names and available contact information of persons to whom the property was presented or a list of each property that was shown during the active term of the brokerage agreement and for whom protection is sought. Delivery is by personal or electronic service with written acknowledgment of receipt, or by regular mail or certified mail postmarked prior to the expiration of the brokerage agreement, return receipt requested.

ITEM 7. Amend subrules 11.6(1) and 11.6(2) as follows:

11.6(1) A licensee cannot pay ~~a commission~~ compensation, any part of ~~a commission~~ compensation, or valuable consideration to an unlicensed third party for performing brokerage functions or engaging in any activity that needs a real estate license. Referral fees or finder's fees paid to unlicensed third parties for performing brokerage activities, or engaging in any activity that needs a real estate license, are barred.

11.6(2) In a brokerage agreement, the broker is principal party to the contract. The broker may, with proper disclosure, pay a portion of the ~~commission~~ compensation earned to an unlicensed seller, landlord, buyer, or tenant that is a principal party to the brokerage agreement. This will be deemed a reduction in the amount of the earned ~~commission~~ compensation.