Regulatory Analysis

Notice of Intended Action to be published: 193E—Chapter 12
"Disclosure of Relationships"

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 and 2024 Iowa Acts, Senate File 2291

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 (DIAL'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 DIAL 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 implements 2024 Iowa Acts, Senate File 2291. The proposed amendments set forth supporting guidance for agency brokerage agreements and negotiation compensation for real estate licensees. These amended rules also update language to conform 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 buyer agency 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 risks that may arise from not having an 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 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 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 other FTE position to investigate and process complaints relating to new laws and rules. Those two staff work for other boards under DIAL as well. Staff salaries to support the work of the Real Estate Commission are covered by the Licensing and Regulation Fund. Licensing fees go into the fund to cover the costs of Commission regulations.

- **Anticipated effect on state revenues:**

There are no anticipated effects on state revenues as a result of the proposed amendments. 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 since 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:**

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 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 paragraph **12.2(3)"b"** as follows:

b. The written disclosure is acknowledged by separate signatures ~~of all parties to the transaction~~. A change in the licensee's representation that makes the initial written disclosure incomplete, misleading, or inaccurate obligates that a new verbal disclosure be made ~~which~~ that is followed by a new written disclosure signed by all parties to the transaction as soon as practical.

ITEM 2. Amend subrule 12.2(6) as follows:

12.2(6) Nothing contained in this rule bars a party from entering into a written ~~listing or~~ brokerage agreement with a broker ~~which~~ that contains duties, obligations, and responsibilities that are in addition to those specified in Iowa real estate license law and commission rules.

ITEM 3. Amend subrule 12.2(10) as follows:

12.2(10) If the seller, landlord, buyer, or tenant ~~rejects representation, or~~ refuses to sign the agency disclosure document, or refuses to sign acknowledging receipt of the disclosure, the licensee notes that fact and includes the date, place, time, and the names of others in attendance on a copy of the agency disclosure document and obtains other documentation establishing delivery of the disclosure and maintains the written documentation, including but not limited to copies of facsimile, restricted delivery certified mail, and other communications, in the transaction file.

ITEM 4. Amend subrule 12.2(17) as follows:

12.2(17) The licensee offering brokerage services to a person as a buyer's or tenant's agent, or who is providing brokerage services to a person as a seller's or landlord's agent, discloses in writing to that person the type or types of brokerage relationships the broker and affiliated licensees are offering to that person before entering into a ~~listing or~~ brokerage agreement with that person.

ITEM 5. Amend subparagraph **12.3(1)"c"(7)** as follows:

(7) Providing brokerage services ~~to all parties to the transaction~~ honestly and in good faith;

ITEM 6. Amend subrule 12.3(2) as follows:

12.3(2) *Duty to a buyer or tenant.* A licensee acting as an exclusive seller's or exclusive landlord's agent discloses to any customer all material adverse facts actually known by the licensee pursuant to Iowa Code section 543B.56.

a. and *b.* No change.

~~*c.* A seller or landlord may agree in writing with an exclusive seller's or exclusive landlord's agent that other designated brokers may be retained or compensated as subagents, and any broker acting as a subagent on the seller's or landlord's behalf is an agent with the same obligations and responsibilities to the seller or landlord as the primary broker of the seller or landlord.~~

~~*d.*~~ *c.* A real estate brokerage engaged by a seller or landlord in a real estate transaction may provide assistance to an unrepresented buyer or tenant by ~~performing such acts as preparing offers and conveying those offers to the seller or landlord and~~ providing information and assistance concerning professional services not related to real estate brokerage services.

ITEM 7. Amend subrule 12.3(3) as follows:

12.3(3) *Alternative properties.* The licensee may show alternative properties not owned by the seller or landlord to ~~prospective~~ buyers or tenants and may list competing properties for sale or lease without breaching any duty or obligation to the seller or landlord.

ITEM 8. Amend subparagraph **12.4(1)"c"(7)** as follows:

(7) Providing brokerage services ~~to all parties to the transaction~~ honestly and in good faith;

ITEM 9. Amend subrules 12.4(2) and 12.4(3) as follows:

12.4(2) *Duty to a seller or landlord.* A licensee acting as an exclusive buyer's or an exclusive tenant's agent discloses to any customer all material adverse facts actually known by the licensee, pursuant to Iowa Code section 543B.56.

a. and *b.* No change.

~~*c.* A buyer or tenant may agree in writing with a buyer's or tenant's agent that other designated brokers may be retained or compensated as subagents, and any broker acting as a subagent on the buyer's or tenant's behalf is a single agent with the same obligations and responsibilities to the buyer or tenant as the primary broker of the buyer or tenant.~~

~~*d.*~~ *c.* A real estate brokerage engaged by a buyer or tenant in a real estate transaction may provide assistance to an unrepresented seller or landlord by ~~performing such acts as preparing offers and conveying those offers to the buyer or tenant and~~ providing information and assistance concerning professional services not related to real estate brokerage services.

12.4(3) *Competing buyers or tenants.* The licensee may show properties in which the buyer or tenant is interested to other ~~prospective~~ buyers or tenants, may assist other competing buyers or tenants, and may enter into brokerage ~~service~~ agreements with other competing buyers or tenants without breaching any duty or obligation to the buyer or tenant.

ITEM 10. Amend paragraph **12.5(4)"b"** as follows:

b. The potential dual agency agreement should be provided to the buyer or tenant prior to entering into a buyer or tenant ~~agency~~ agreement ~~or a contract for buyer or tenant brokerage services~~.

ITEM 11. Amend rule 193E—12.6(543B) as follows:

193E—12.6(543B) Appointed agents within a brokerage. Iowa Code section 543B.59 authorizes a designated broker to elect to appoint in writing one or more different licensees affiliated with the broker to act as agent to represent exclusively different clients in the same transaction, to the exclusion of all other affiliated licensees within the real estate brokerage. A licensee cannot disclose, except to the licensee's designated broker, information made confidential by request or instructions of the client the licensee is representing or otherwise confidential by statute or rule, except information allowed by this chapter or mandated to be disclosed by law.

12.6(1) No change.

12.6(2) The designated broker may decide that since both seller and buyer, or landlord and tenant, brokerage relationships are being offered to consumers by the broker's company, only the affiliated licensee who, on behalf of the designated broker, entered into the listing agreement with the seller or leasing agreement with the landlord will represent the seller or landlord as that client's agent. In that scenario, ~~all~~ other licensees affiliated with the designated broker ~~will~~ may represent buyers or tenants as their agents in any transactions dealing with the subject property.

12.6(3) The designated broker may decide that since both seller and buyer, or landlord and tenant, brokerage relationships are being offered to consumers by the broker's company, only the affiliated licensee who, on behalf of the designated broker, entered into the buyer representation agreement with the buyer or leasing agreement with the tenant will represent the buyer or tenant as that client's agent. In that scenario, other licensees affiliated with the designated broker may represent sellers or landlords as their agents in any transactions dealing with the subject property.

~~**12.6(3)**~~ **12.6(4)** If any seller, landlord, buyer, or tenant who is a client of the broker refuses to sign and consent to the appointed agent within the brokerage appointed by that same broker for the

other party to the transaction, then the broker and licensees affiliated with the broker cannot act as an appointed agent for that other party.

ITEM 12. Amend subrule 12.7(1) as follows:

12.7(1) Prior to entering into a ~~listing or~~ brokerage agreement, a real estate brokerage notifies a client in writing of the real estate brokerage's appointed agent policy and those affiliated licensees in accordance with Iowa Code section 543B.59(1). The appointed agent disclosure includes, at a minimum, the following provisions:

a. to *e.* No change.