Regulatory Analysis

Notice of Intended Action to be published: 193E—Chapter 22
"Real Estate Wholesaling"

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 543B

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:

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

The proposed chapter enforces 2022 Iowa Acts, House File 2394, and provides supporting rules.

Analysis of Impact

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

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

Individuals who are not licensed and now require either a broker license or broker representation will have to either compensate a broker to facilitate the transaction or incur the costs of obtaining a license to practice real estate.

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

A member of the public who is interested in selling the member's home though a wholesale transaction will benefit from the State regulating the practice of wholesaling by avoiding fraudulent practices.

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:**

The quantitative impact of this rulemaking is unknown because it is implementing new legislation from 2024 Iowa Acts, House File 2394. DIAL continues to review the impact on the community.

- **Qualitative description of impact:**

This rulemaking implements new legislation from 2024 Iowa Acts, House File 2394. Since these are new rules, the qualitative impact is not known. The belief is that this rulemaking will improve the real estate experience and ensure all individuals are receiving notice and have knowledge of who they are dealing with in their real estate transactions.

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 duties associated with regulating this new law. The time needed to manage this provision is generally in the form of responding to questions related to the practice of wholesaling and investigating complaints submitted regarding this matter. The Real Estate Commission utilizes 1.0 full-time equivalent (FTE) position to process continuing education applications, inquiries, and audits, and one other FTE position to assist with inquiries. Those two staff work for other boards under DIAL 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 impact on state revenues. Staff salaries to support the work of the license are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557.

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

The Commission believes the current requirements ensure public safety and ensure a minimum competency of service is provided to Iowans.

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:**

No alternative methods were considered.

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

No alternative methods were considered.

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?

The proposed chapter may affect small businesses that provided wholesaling practices without a broker license. The business will either need to compensate a broker to facilitate the transaction or incur the costs of obtaining a license to practice real estate.

Text of Proposed Rulemaking

ITEM 1. Adopt the following **new** 193E—Chapter 22:

CHAPTER 22
WHOLESALING OF RESIDENTIAL PROPERTY

193E—22.1(543B) Real estate wholesaling. A licensed real estate broker may engage in residential real estate wholesaling or represent a nonlicensed wholesaler in a residential real estate transaction provided proper disclosure is made under the guidelines in Iowa Code section 543B.6A.

193E—22.2(543B) Disclosure of wholesaling. A real estate wholesaler shall provide disclosure to all parties to the residential real estate wholesaling transaction prior to executing a contract to purchase or conveying an equitable interest to another party, including but not limited to the following:

22.2(1) The legal identities of all parties to the transaction, including the current titleholder for the residential property, the wholesaler, the purchaser of the equitable interest, and any real estate licensee who represents a party in the transaction.

22.2(2) An explanation of the wholesaling process, including but not limited to the following:

a. A wholesaler holds an equitable interest in the property, not legal title.

b. A wholesaler is selling its equitable interest in the property to another party.

c. A wholesaler may earn a profit from the sale of its equitable interest in the property.

22.2(3) Wholesaling disclosure: "This transaction constitutes real estate wholesaling, meaning the wholesaler holds only an equitable interest in the property and may not be able to convey title."

193E—22.3(543B) Penalties. Residential real estate wholesalers who do not comply with the required disclosures or licensing requirements shall be subject to a civil fine of up to $10,000 or 10 percent of the sale price for each transaction in violation of Iowa Code section 543B.6A, and the seller or buyer may cancel the contract at any time prior to closing without penalty and retain any earnest money paid by the wholesaler. Civil penalties shall be enforced at the discretion of the real estate commission.

These rules are intended to implement Iowa Code section 543B.6A.