

REAL ESTATE COMMISSION[193E]

[Prior to 6/15/88, see Real Estate Commission[700]]

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CHAPTER 1
ADMINISTRATION

[Prior to 6/15/88, see Real Estate Commission[700] Ch 1]

[Prior to 9/4/02, see 193E—Chs 2, 5, 7, 8]

193E—1.1(543B) Mission of the commission. The mission of the Iowa real estate commission is to protect the public through the examination, licensing, and regulation of real estate brokers, salespersons, and firms pursuant to Iowa Code chapter 543B, Real Estate Brokers and Salespersons; to administer Iowa Code chapter 543C, Sales of Subdivided Land Outside of Iowa; and to administer Iowa Code chapter 557A, Time-Shares.

The commission is a policy-making body with authority to promulgate rules for the regulation of the real estate industry consistent with all applicable statutes. Rules promulgated by the commission are published under agency number 193E in the Iowa Administrative Code. Administrative support services are furnished by the professional licensing and regulation division of the department of commerce. The administrator of the professional licensing and regulation division appoints and supervises an executive officer and staff to carry out the duties assigned by the commission. The commission or duly authorized representative may inspect subdivided land outside of Iowa pursuant to Iowa Code section 543C.4.

193E—1.2(543B) Correspondence and communications. Correspondence and communications with the commission shall be addressed or directed to the commission office at 1918 S.E. Hulsizer, Ankeny, Iowa 50021. The facsimile number is (515)281-7411. Contact information is available from the commission's Web site located at <http://www.state.ia.us/irec>.

193E—1.3(543B) Meetings of the commission. Meetings of the commission shall be held at times scheduled by the commission in the offices of the commission or at a place designated by the commission. Special meetings may be called by the chairperson or executive officer of the commission, who shall set the time and place of the meeting.

193E—1.4(543B) Custodian of records, filings, and requests for public information. Unless otherwise specified by the rules of the department of commerce or the professional licensing and regulation division, the commission is the principal custodian of its own agency orders, statements of law or policy issued by the commission, legal documents, and other public documents on file with the commission.

1.4(1) Any person may examine public records promulgated or maintained by the commission at its office during regular business hours. The office is open during regular business hours from 8 a.m. until 4:30 p.m., Monday through Friday. The office is closed Saturdays, Sundays, and official state holidays.

1.4(2) Records, documents and other information may be gathered, stored, and available in electronic format. Information, various forms, documents, and the license law and rules may be reviewed or obtained at any time by the public from the commission's Web site located at <http://www.state.ia.us/irec>.

1.4(3) Deadlines. Unless the context requires otherwise, any deadline for filing a document shall be extended to the next working day when the deadline falls on a Saturday, Sunday, or official state holiday.

1.4(4) Public records and fair information practices. The commission's rules on public records and fair information practices may be found in the uniform rules for the professional licensing and regulation division at 193—Chapter 13.

193E—1.5(543B) Waiver or variance from rules. Persons who wish to seek waivers from commission rules should consult the uniform rules for the professional licensing and regulation division at 193—Chapter 5.

193E—1.6(543B) Investigation and subpoena. Commission rules regarding investigations and investigatory subpoenas may be found in 193E—Chapter 18 and in the uniform rules for the professional licensing and regulation division at 193—Chapter 6.

193E—1.7(543B) Contested case procedures. Commission rules on contested case procedures may be found in 193E—Chapter 18 and in the uniform rules for the professional licensing and regulation division at 193—Chapter 7.

193E—1.8(543B) Denial of issuance or renewal of license for nonpayment of child support or student loan. Commission rules on the denial of the issuance or renewal of license based on nonpayment of child support obligations or student loan may be found in the uniform rules for the professional licensing and regulation division at 193—Chapter 8.

193E—1.9(543B) Petition for rule making. Persons wishing to file a petition for rule making should consult the uniform rules for the professional licensing and regulation division at 193—Chapter 9.

193E—1.10(543B) Declaratory orders. Persons wishing to seek a declaratory order should consult the uniform rules for the professional licensing and regulation division at 193—Chapter 10.

193E—1.11(543B) Sale of goods and services. Commission rules on the sale of goods and services by commission members may be found in the uniform rules for the professional licensing and regulation division at 193—Chapter 11.

193E—1.12(543B) Impaired licensee review committees. Commission rules governing impaired licensee review committees may be found in the uniform rules for the professional licensing and regulation division at 193—Chapter 12.

These rules are intended to implement Iowa Code chapters 17A, 252J, 261, 272C and 543B.

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CHAPTER 2 DEFINITIONS

[Prior to 6/15/88, see Real Estate Commission[700] Ch 2]
[Prior to 9/4/02, see 193E—1.1(543B) and 193E—2.2(543B)]

193E—2.1(543B) Definitions.

“Additional license” means any officer or partner license(s) issued based upon and dependent or contingent upon the primary or main officer or partner license, but assigned to a different corporation or partnership.

“Advance fees” means any fees charged for services to be paid in advance of the rendering of such services including, without limitation, any fees charged for listing, advertising, or offering for sale or lease any real property, but excluding any fees paid solely for advertisement in a newspaper of general circulation.

“Affiliated licensee” means a broker associate or salesperson, as defined in Iowa Code sections 543B.5(5) and (19), who is under the supervision of a broker.

“Applicant” means a person who has applied for or intends to apply for a real estate salesperson or real estate broker license.

“Application form” means the form furnished by the commission to be completed and submitted to apply for an original license as a real estate salesperson, real estate broker, real estate firm or trade name.

“Branch office license” means the same as *“duplicate license”* as used in Iowa Code section 543B.31.

“Broker” means any person holding an Iowa real estate broker license as defined in Iowa Code section 543B.3.

“Brokerage agreement” means a contract between a broker and a client, which establishes the relationship between the parties as to the brokerage services to be performed.

“Broker associate” is defined in Iowa Code section 543B.5(5).

“Buyer” includes a purchaser, tenant, vendee, lessee, party to an exchange, or grantee of an option. Selected rules in these chapters will at times refer separately to “buyers” and “tenants” to clarify licensees’ duties and obligations.

“Client” means a party to a transaction who has an agency agreement with a broker for brokerage services.

“Commission” means the real estate commission.

“Common source information companies” means any individual, corporation, limited liability company, business trust, estate, trust, partnership, association, or any other legal entity (except any government or governmental subdivision or agency, or any officer or employee thereof acting in such individual’s official capacity) that is a source, compiler, or supplier of information regarding real estate for sale or lease and other data and includes, but is not limited to, multiple listing services.

“Completed application” means an original or renewal application timely received with all required information, documents, signatures, fees or penalties.

“Confidential information” means information made confidential by statute, regulation, or express instructions from the client. Confidential information:

1. Shall include, but not be limited to, the following:

- Information concerning the client that, if disclosed to the other party, could place the client at a disadvantage when bargaining;
- That the seller or landlord is willing to accept less than the asking price or lease price for the property;
- That the buyer or tenant is willing to pay more than the asking price or lease price for the property;
- The motivating factors for the party selling or leasing the property;
- The motivating factors for the party buying or leasing the property;
- That the seller or landlord will agree to sale, lease, or financing terms other than those offered;
- That the buyer or tenant will agree to sale, lease, or financing terms other than those offered;

- The seller's or landlord's real estate needs;
- The buyer's or tenant's real estate needs;
- The seller's or landlord's financial information, except that the seller's ability to sell and the landlord's ability to lease are considered a material fact;
- The buyer's or tenant's financial qualifications, except that the buyer's ability to buy and the tenant's ability to lease are considered a material fact.

2. Does not include "material adverse facts" as defined in Iowa Code section 543B.5(14).

3. Shall not be disclosed unless:

- The client to whom the information pertains provides informed written consent to disclose the information;
- The disclosure is required by statute or regulation, or failure to disclose the information would constitute fraudulent representation;
- The information is made public or becomes public by the words or conduct of the client to whom the information pertains or from a source other than the licensee; or
- The disclosure is necessary to defend the licensee against an accusation of wrongful conduct in an actual or threatened judicial proceeding, an administrative proceeding before the commission, or in a proceeding before a professional committee.

"Consumer" means a person seeking or receiving real estate brokerage services.

"Contract between the buyer and seller" means an offer to purchase, a sales contract, an option, a lease-purchase option, an offer to lease, or a lease.

"Conviction" is defined in Iowa Code section 543B.15(3).

"Customer" means a consumer of real estate services in connection with a real estate transaction who is not being represented by the licensee, but for whom the licensee may perform ministerial acts. A customer may be a client of another broker, may not have yet decided whether or not to be represented by any broker, or may have chosen not to be represented by any broker.

"Designated broker" means the broker or broker associate designated as the person in charge of and responsible for supervision of a main office or branch office as defined in Iowa Code section 543B.5(11).

"Dual agent" means a licensee who, with the written informed consent of all the parties to a contemplated real estate transaction, has entered into a brokerage agreement with and therefore represents the seller and buyer or both the landlord and tenant in the same in-house transaction.

"Duplicate license" or "replacement license" means a license reissued for the remainder of a license term, at the written request of the broker, to replace a lost or destroyed license.

"Electronic format" means a record generated, communicated, received, or stored by electronic means. Such electronic record must be in a format that has the continued capability to be retrieved and legibly printed upon request.

"Examination" means a licensure examination required before issuance of a license.

"Examinee" means a person who has registered or intends to register to take a licensure examination.

"Filed" means that documents or application and fees are considered filed with the commission on the date postmarked, not the date metered, or on the date personally delivered to the commission office.

"Firm" means a licensed partnership, association, limited liability company, or corporation.

"Licensee" means a broker as defined in Iowa Code section 543B.3, a broker associate as defined in Iowa Code section 543B.5(5), or a salesperson as defined in Iowa Code section 543B.5(19).

"Listing broker" means the real estate broker who obtains a listing of real estate or of an interest in a residential cooperative housing corporation.

"Ministerial acts" means those acts that a licensee may perform for a consumer that are informative in nature and do not rise to the level of specific assistance on behalf of a consumer. For purposes of these rules, ministerial acts include, but are not limited to, the following:

1. Responding to general telephone inquiries by consumers as to the availability and pricing of brokerage services;
2. Responding to general telephone inquiries from a consumer concerning the price, facts and features, or location of property;

3. Attending an open house and responding to general questions from a consumer about the facts and features of the property;
4. Setting an appointment to view property;
5. Responding to general questions of consumers walking into a licensee's office concerning brokerage services offered or the facts and features of particular properties;
6. Accompanying an appraiser, inspector, contractor, or similar third party on a visit to a property;
7. Describing the facts and features of a property or the property's condition in response to a consumer's inquiry;
8. Completing business or factual information for a consumer on an offer or contract to purchase on behalf of a client;
9. Showing a client through a property being sold by an owner; or
10. Referring a person to another broker or service provider.

"Original license" means the license of a salesperson, broker, or firm that covers the first term of licensure in Iowa. A license applied for and reissued after the final deadline for renewal of a license is also an original license.

"Primary license" or *"main license"* means the original license issued based upon examination, including any subsequent renewals or reinstatements of the license. Continuing education is required to renew to active status.

"Principal broker" means a broker who is either a real estate proprietor, a partner in a real estate partnership, or an officer in a real estate corporation.

"Renewal application form" means the form furnished by the commission to be completed and submitted to apply for renewal of a license as a real estate salesperson, real estate broker, real estate firm, branch office or trade name.

"Salesperson" means any person holding an Iowa real estate salesperson license as defined in Iowa Code section 543B.5(19).

"Seller" includes an owner, landlord, vendor, lessor, party to an exchange, or grantor of an option. Selected rules in these chapters will at times refer separately to "sellers" and "landlords" to clarify licensees' duties and obligations.

"Selling broker" means a real estate broker who finds and obtains a buyer in a transaction.

"Single agent" means a licensee who represents only one party in a real estate transaction. A single agent includes a broker and any affiliated broker associates or salespersons representing a party exclusively or nonexclusively, regardless of whether the single agent be all affiliated broker associates or salespersons, or only the identified broker associates or salespersons, or a group of identified broker associates or salespersons. A single agent may be one of the following:

1. "Seller's agent" which means a licensee who represents the seller in a real estate transaction;
2. "Landlord's agent" which means a licensee who represents the landlord in a leasing transaction;
3. "Buyer's agent" which means a licensee who represents the buyer in a real estate transaction;

and

4. "Tenant's agent" which means a licensee who represents the tenant in a leasing transaction.

"Sole-proprietor broker" means an individual or single license broker who privately owns and manages a real estate company.

"Specific assistance" means any communication beyond casual conversation concerning the facts and features of a property which occurs prior to the point of discussing price range or any specific, financial qualifications of the buyer or tenant, or selling or buying motives or objectives of the seller or buyer, or tenant or landlord, or eliciting or accepting information involving a proposed or preliminary offer associated with a specific property, in which the person may unknowingly divulge any confidential personal or financial information, which, if disclosed to the other party, could harm the party's bargaining position. For the purposes of these rules, "specific assistance" shall not include preliminary conversations or "small talk" concerning location and property styles, or responses to general factual questions from a potential buyer or tenant concerning facts and features of properties which have been advertised for sale or lease.

“*Status*” means the condition of a real estate license. A license may be active, inactive, expired, suspended, revoked or canceled. “Inactive license” is defined in Iowa Code section 543B.5(12).

“*Subagent*” means a broker and a broker’s affiliated licensees, engaged by another broker to act as an agent for a client. The subagent has the same obligations and responsibilities to the client as the primary broker representing the client.

“*Third party*” means a person or entity that is not a client, is not a party to the transaction, and has no agency relationship to a real estate brokerage.

“*Timely*” means done or occurring at a reasonable time under the circumstances.

“*Timely received*” means postmarked, not metered, not later than midnight on the last date of the deadline specified by the Iowa Code or commission rules.

“*Transaction*” means the sale, exchange, purchase, or rental of, or the granting or acceptance of, an option to sell, exchange, purchase, or rent an interest in real estate, but excluding the subleasing of an interest in a residential cooperative housing corporation, when the leases are for one year or less.

“*Type*” means the category to which a broker license or firm license is issued. A broker license may be issued as a sole-proprietor broker, broker officer, broker partner, or broker associate. A firm license may be issued as a corporation, partnership or association.

“*Undisclosed dual agent*” means a licensee representing two or more clients in the same transaction whose interests are adverse without the knowledge and informed consent of the clients.

This rule is intended to implement Iowa Code chapters 17A, 272C and 543B.

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CHAPTER 3
BROKER LICENSE

[Prior to 6/15/88, see Real Estate Commission[700] Ch 3]

[Prior to 9/4/02, see 193E—2.10(543B) to 193E—2.12(543B) and 193E—3.3(543B)]

193E—3.1(543B) General requirements for broker license. An applicant for a broker license must meet all requirements of Iowa Code section 543B.15.

3.1(1) An applicant for a real estate broker's license must be a person whose application for licensure has not been rejected in this or any other state or jurisdiction within 12 months prior to the date of application, and whose real estate license has not been revoked in this or any other state within two years prior to the date of application.

3.1(2) An applicant for a real estate broker license shall be 18 years of age or older. An applicant is not ineligible because of citizenship, sex, race, religion, marital status, or national origin, although the application form may require citizenship information.

3.1(3) An applicant for a real estate broker's license who has been convicted of forgery, embezzlement, obtaining money under false pretenses, theft, extortion, conspiracy to defraud, or another similar offense, or of any crime involving moral turpitude, in a court of competent jurisdiction in this state or in any other state, territory, or district of the United States, or in any foreign jurisdiction, may be denied a license by the commission on the grounds of the conviction. "Conviction" is defined in Iowa Code section 543B.15(3).

3.1(4) An applicant for a real estate broker's license who has had a professional license of any kind revoked in this or any other jurisdiction may be denied a license by the commission on the grounds of the revocation.

3.1(5) As required by Iowa Code section 543B.15(8) and 193E—subrule 16.3(1), an applicant for licensure as a real estate broker shall complete at least 72 classroom hours of commission-approved real estate education within 24 months prior to taking the broker examination. This education shall be in addition to the required salesperson prelicense course. Effective January 1, 2005, and thereafter, all persons applying for a broker license within their first renewal term must complete the 36-hour salesperson postlicense courses, including 12 hours of Developing Professionalism and Ethical Practices, 12 hours of Buying Practices and 12 hours of Listing Practices, before a broker license can be issued.

3.1(6) As required by Iowa Code section 543B.15(8), an applicant for licensure as a real estate broker must have been a licensed real estate salesperson actively engaged in real estate for a period of at least 24 months preceding the date of application, or shall have had experience as a former broker or salesperson or otherwise substantially equivalent experience to that which a licensed real estate salesperson would ordinarily receive during a period of 24 months.

a. An applicant for a broker license may use active experience as a former Iowa salesperson or active salesperson experience in a state or jurisdiction which has a current reciprocal licensing agreement or memorandum in place with Iowa, or a combination of both, to satisfy the experience requirement for a broker license only if the former Iowa salesperson or reciprocal state or jurisdiction salesperson was actively licensed for not less than 24 months and if the license on which the experience is based has not been expired for more than three years prior to the date the completed broker application with fee is filed with the commission.

b. For waiver of commission rules or substitution of experience, see Iowa Code section 543B.15 and the uniform rules for the professional licensing and regulation division at 193—Chapter 5.

193E—3.2(543B) License examination. Examinations for licensure as a real estate broker shall be conducted by the commission or its authorized representative.

3.2(1) Testing service. The commission shall negotiate an agreement with a testing service relating to examination development, test scheduling, examination sites, grade reporting and analysis. The commission shall approve the form, contract, and method of administration. The examination shall be conducted in accordance with approved procedures formulated by the testing agency. Applicants shall register and pay examination fees directly to the testing service.

3.2(2) Requests for substitution, waiver, or variance. An examinee must meet the requirements set out in Iowa Code section 543B.15. Requests for substitution, waiver, or variance of commission rules or of the qualifications for licensure as permitted by Iowa Code section 543B.15 shall be submitted in writing and as provided by the commission's rules regarding waivers and variances which can be found in the uniform rules for the professional licensing and regulation division at 193—Chapter 5. The commission will consider each case on an individual basis. It may require additional supporting information. If the applicant's experience or prelicense education is found to be less than equivalent to the statutory requirement, the commission may suggest methods of satisfying the deficiency. If a waiver is granted, the applicable examination must be passed before the end of the sixth month following the date of the waiver.

3.2(3) Evidence of completion of prelicense education required. An examinee shall be required to show evidence at the examination site that required prelicense education has been completed. If the commission has granted substitution, waiver, or variance of prelicense education, the letter granting substitution, waiver, or variance will serve as evidence of completion. Persons planning to qualify under rule 193E—5.3(543B) must obtain written authorization from the commission to show at the examination site.

3.2(4) Failure to pass examination. An examinee who takes an examination and fails shall be eligible to apply to retake the examination at any time the examination is offered by filing a new registration form and paying the examination fee, unless the qualifying time period for the prelicense education or granted waiver has expired.

3.2(5) The commission may waive the examination requirement for a nonresident applicant licensed by examination under the laws of a state or jurisdiction having similar requirements and which has a current reciprocal licensing agreement or memorandum in place with Iowa that extends similar recognition to Iowa licensees, as provided in Iowa Code section 543B.21.

193E—3.3(543B) Application for broker license. An applicant who passes a qualifying broker examination will receive a passing score report and an application form for licensure from the testing service. An applicant who passes a qualifying examination and applies for a license must file with the commission a completed application, license fee, proof of required education, and score report not later than the last working day of the sixth calendar month following the qualifying real estate examination.

3.3(1) Application contents. The application form requires detailed personal, financial, and business information concerning the applicant; and the applicant for licensure shall attest to its accuracy.

3.3(2) License terms. Real estate broker, salesperson, trade name, branch office, and firm licenses are issued for a three-year term, counting the remaining portion of the year issued as a full year. Licenses expire on December 31 of the third year of the license term. Branch office licenses and trade name licenses are issued for the remaining portion of the license term of the license to which each is assigned.

3.3(3) Denial of application. An application may be denied on the grounds provided in Iowa Code chapter 543B and in rule 193—7.39(546,272C). The administrative processing of an application shall not prevent the later initiation of a contested case to challenge a licensee's qualifications for licensure.

193E—3.4(543B) Broker continuing education requirements.

3.4(1) As a requirement of license renewal in active status, each broker or broker associate shall complete a minimum of 36 hours of approved programs, courses or activities. The continuing education must be completed during the three calendar years of the license term and cannot be carried over to another license term.

3.4(2) Brokers and broker associates renewing December 2001 and thereafter shall complete approved courses in the following subjects to renew to active status, except in accordance with 193E—Chapter 16.

Law Update	8 hours
Ethics	4 hours
Electives	24 hours

3.4(3) A license may be renewed without the required continuing education, but it can only be renewed to inactive status. Prior to reactivating a license which has been issued inactive due to the licensee's failure to submit evidence of continuing education, the licensee must submit evidence that all deficient continuing education hours have been completed. The maximum continuing education hours shall not exceed the prescribed number of hours of one license renewal period and must be completed during the three calendar years preceding activation of the license.

193E—3.5(17A,272C,543B) Renewing a broker license. To remain authorized to act as a real estate broker, a broker must renew a real estate license before the expiration date of the license. Brokers who fail to renew a real estate license before expiration are not authorized to practice as real estate brokers in Iowa. Termination of a broker's authority to practice real estate in Iowa automatically terminates the authority of all salespersons employed by or assigned to the broker.

3.5(1) Application forms. Application forms for renewal of a broker's license may be obtained from the commission office or may be available on the commission's Web site. Brokers may renew electronically or by submitting a written application. While the commission generally mails renewal application forms or reminders to brokers in the November preceding license expiration, the failure of the commission to mail an application form or the failure of a broker to receive an application form shall not excuse the broker from the requirement to timely renew.

3.5(2) Qualifications for renewal. The commission shall grant an application to renew a broker's license if:

a. The application is timely received by the commission by December 31, or within the 30-day grace period after expiration as provided by Iowa Code section 543B.28.

b. The application is accompanied by the regular renewal fee and, if received by the commission, or postmarked, after midnight December 31 but prior to midnight January 30, is accompanied by a penalty of \$25.

c. The application is fully completed with all necessary information, including proper disclosure of required continuing education and errors and omissions insurance.

d. The application fails to reveal grounds to deny a license, such as the revocation of a license in another jurisdiction or a criminal conviction.

3.5(3) Incomplete or untimely applications to renew. Renewal applications received by the commission, or postmarked, after midnight January 30 shall be treated as applications to reinstate an expired license under rule 193E—3.6(272C,543B).

a. Applications to renew or reinstate a broker's license which are incomplete or which are not accompanied by the proper fee may be returned to the broker for additional information or fee.

b. Alternatively, the commission may retain the application, and notify the applicant that the application cannot be granted without further information or fee.

3.5(4) Insufficient continuing education. Renewal applications which do not report completion of required continuing education, but which are otherwise timely and sufficient and accompanied with the proper fee, shall be renewed in inactive status. In the event of a factual dispute regarding the broker's intent to renew in inactive status or a broker's compliance with continuing education requirements, the commission may deny the application and provide the applicant with an opportunity for hearing according to the procedures set forth in rule 193—7.39(546,272C).

3.5(5) Denial of application to renew. An application to renew may be denied on the grounds provided in Iowa Code chapter 543B and in rule 193—7.39(546,272C). The administrative processing of an application to renew shall not prevent the later initiation of a contested case to challenge a licensee's qualifications for licensure.

3.5(6) Renewal of inactive or suspended license. An inactive or suspended license must be timely renewed or it shall expire. The status of a license does not affect the requirement to renew.

193E—3.6(272C,543B) Reinstatement of an expired broker license. A real estate broker who fails to renew or file a completed renewal application by midnight January 30 of the first year following expiration may reinstate the license within three years of expiration by submitting a complete and

sufficient application accompanied by the regular renewal fee and an additional reinstatement fee of \$25 for each partial or full month following expiration. From the date of expiration to the date of reinstatement, the broker is not authorized to practice as a real estate broker in Iowa.

3.6(1) *Continuing education.* An application to reinstate an expired broker license must report that the broker either fully satisfied all required continuing education or has retaken and passed the broker examination. A broker holding an expired license who wishes to retake the broker examination must obtain written authorization from the commission to show at the examination site.

3.6(2) *Deposit of reinstatement fees.* Reinstatement fees collected under this rule shall be transmitted to the treasurer's office and credited to the education fund established in Iowa Code section 543B.54.

3.6(3) *Starting over.* A broker who fails to reinstate an expired license by December 31 of the third year following expiration shall be treated as if the former broker had never been licensed in Iowa. Such a former broker must start over in the licensing process and first qualify and apply for a salesperson license.

3.6(4) *Reinstatement of a nonresident reciprocal broker license.* An expired broker license issued by reciprocity shall be reinstated as provided by this rule, except, in addition to the regular license fee, a \$25 reinstatement fee shall accompany a qualifying sufficient reciprocal application.

3.6(5) *Denial of application.* An application may be denied on the grounds provided in Iowa Code chapter 543B and in rule 193—7.39(546,272C). The administrative processing of an application shall not prevent the later initiation of a contested case to challenge a licensee's qualifications for licensure.

These rules are intended to implement Iowa Code chapters 17A, 272C and 543B.

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CHAPTER 4
SALESPERSON LICENSE

[Prior to 9/4/02, see 193E—2.10(543B), 193E—2.11(543B), 193E—3.2(543B), and 193E—3.3(543B)]

193E—4.1(543B) General requirements for salesperson license. A person who is licensed under and employed by or otherwise associated with a real estate broker or firm is a “salesperson” as defined in Iowa Code section 543B.5(20) and rule 193E—2.1(543B).

4.1(1) An original application for a salesperson license cannot be issued to inactive status. An applicant for a salesperson license must be recommended by an affiliating broker to be granted a license as provided in Iowa Code section 543B.16.

4.1(2) The salesperson license is issued to the custody and control of the broker as provided in Iowa Code section 543B.24. If the salesperson is terminated, or terminates the employment or association, the license must be returned to the commission. Once the license is returned or mailed to the commission, it is unlawful for that salesperson to perform any acts requiring a real estate license as provided in Iowa Code section 543B.33. However, if the license is transferred, as provided in rule 193E—6.2(543B), the salesperson may work immediately for the new broker.

4.1(3) A salesperson must be assigned to a licensed broker or firm and cannot conduct business independently.

4.1(4) Except as provided in Iowa Code section 543B.21, an applicant for a salesperson license must meet all requirements of Iowa Code section 543B.15.

4.1(5) An applicant for a real estate salesperson license must be a person whose application for licensure has not been rejected in this or any other state or jurisdiction within 12 months prior to the date of application, and whose real estate license has not been revoked in this or any other state within two years prior to the date of application.

4.1(6) An applicant for a real estate salesperson license shall be 18 years of age or older. An applicant is not ineligible because of citizenship, sex, race, religion, marital status, or national origin, although the application form may require citizenship information.

4.1(7) An applicant for a real estate salesperson license who has been convicted of forgery, embezzlement, obtaining money under false pretenses, theft, extortion, conspiracy to defraud, or another similar offense, or of any crime involving moral turpitude, in a court of competent jurisdiction in this state or in any other state, jurisdiction, territory, or district of the United States, or in any foreign jurisdiction, may be denied a license by the commission on the grounds of the conviction. “Conviction” is defined in Iowa Code section 543B.15(3) and rule 193E—2.1(543B).

4.1(8) An applicant for a real estate salesperson license who has had a professional license of any kind revoked in this or any other jurisdiction may be denied a license by the commission on the grounds of the revocation.

4.1(9) Salesperson prelicense education requirements. As required by Iowa Code section 543B.15(8) and 193E—Chapter 16, the required course of study for the salesperson licensing examination shall consist of 60 classroom or computer-based hours of real estate principles and practices. To be eligible to take the examination, the applicant must complete the salesperson prelicense education during the 12 months prior to taking the examination.

4.1(10) Beginning January 1, 2009, and thereafter, an applicant applying for an original salesperson license must provide evidence of successful completion of the following courses: 12 hours of Developing Professionalism and Ethical Practices, 12 hours of Buying Practices and 12 hours of Listing Practices. This education is in addition to the 60-hour salesperson prelicense course. The applicant must complete all the required education during the 12 months prior to taking the examination.

4.1(11) All salespersons licensed on January 1, 2009, or thereafter, as a requirement of license renewal and to maintain active status, must complete a minimum of 36 hours of approved courses. The continuing education must be completed during the three calendar years of the license term and cannot be carried over to another license term. Approved courses in the following subjects shall be completed to renew to active status: 8 hours of Law Update, 4 hours of Ethics and 24 hours of electives.

193E—4.2(543B) License examination. Examinations for licensure as a real estate salesperson shall be conducted by the commission or its authorized representative.

4.2(1) Testing service. The commission shall negotiate an agreement with a testing service relating to examination development, test scheduling, examination sites, grade reporting and analysis. The commission shall approve the form, contract, and method of administration. The examination shall be conducted in accordance with approved procedures formulated by the testing service. Applicants shall register and pay examination fees directly to the testing service.

4.2(2) Requests for substitution, waiver or variance. An examinee must meet the requirements set out in Iowa Code section 543B.15. Requests for substitution, waiver, or variance of the qualifications for license required by Iowa Code section 543B.15 shall be submitted in writing and as provided by the commission's rules regarding waivers and variances, found in the uniform rules for the professional licensing and regulation division at 193—Chapter 5. The commission will consider each case on an individual basis. It may require additional supporting information. If the applicant's prelicense education is found to be less than equivalent to the statutory requirement, the commission may suggest methods of satisfying the deficiency. If a substitution, waiver or variance is granted, the applicable examination must be passed before the end of the sixth month following the date of the waiver.

4.2(3) Evidence of completion of prelicense education required. An examinee shall be required to show evidence at the examination site that required prelicense education has been completed. If the commission has granted a substitution, waiver, or variance of prelicense education, the letter granting the substitution, waiver, or variance will serve as evidence of completion. Persons planning to qualify under rule 193E—5.3(543B) must obtain written authorization from the commission to show at the examination site.

4.2(4) Failure to pass examination. An examinee who takes an examination and fails shall be eligible to apply to retake the examination at any time the examination is offered by filing a new registration form and paying the examination fee, unless the qualifying time period for the prelicense education or waiver granted has expired.

193E—4.3(543B) Application for salesperson license. An applicant who passes a qualifying salesperson examination will receive a passing score report and an application form for licensure from the testing service. An applicant who passes a qualifying examination and applies for a license must file with the commission a completed application with license fee, proof of required education, and score report not later than the last working day of the sixth calendar month following the qualifying real estate examination.

4.3(1) Application contents. The application form requires detailed personal, financial, and business information concerning the applicant, and the applicant for licensure shall attest to its accuracy.

4.3(2) License terms. A salesperson license is issued for a three-year term, counting the remaining portion of the year issued as a full year. Licenses expire on December 31 of the third year of the license term.

4.3(3) Denial of application. An application may be denied on the grounds provided in Iowa Code chapter 543B and in rule 193—7.39(546,272C). The administrative processing of an application shall not prevent the later initiation of a contested case to challenge a licensee's qualifications for licensure.

193E—4.4(543B) Salesperson continuing education requirements.

4.4(1) As a requirement of license renewal in active status, each salesperson shall complete a minimum of 36 hours of approved programs, courses or activities. The continuing education must be completed during the three calendar years of the license term and cannot be carried over to another license term.

4.4(2) All first-time salespersons renewing licenses to maintain active status shall complete 36 commission-approved classroom hours by December 31 of the third year of licensure. The following courses satisfy the first license renewal continuing education requirement:

Developing Professionalism and Ethical Practices	12 hours
Buying Practices	12 hours

Listing Practices 12 hours

4.4(3) A salesperson license may be renewed without the required continuing education, but it may only be renewed to inactive status. Prior to reactivating a license which has been issued inactive due to failure to submit evidence of continuing education, the licensee must submit evidence that all deficient continuing education hours have been completed. The maximum continuing education hours shall not exceed the prescribed number of hours of one license renewal period and must be completed during the three calendar years preceding activation of the license.

193E—4.5(543B) Renewing a license. To remain authorized to act as a real estate salesperson, a salesperson must renew a real estate license before the expiration date of the license. Salespersons who fail to renew a real estate license before expiration are not authorized to practice as real estate salespersons in Iowa.

4.5(1) Application forms. Application forms for renewal of a salesperson license may be obtained from the commission office or may be available on the commission's Web site. Salespersons may renew electronically or by submitting a written application. While the commission generally mails renewal application forms or reminders to salespersons in the November preceding license expiration, the failure of the commission to mail an application form or the failure of a salesperson to receive an application form shall not excuse the salesperson from the requirement to timely renew.

4.5(2) Qualifications for renewal. The commission shall grant an application to renew a salesperson license if:

a. The application is timely received by the commission by December 31, or within the 30-day grace period after expiration as provided by Iowa Code section 543B.28.

b. The application is accompanied by the regular renewal fee and, if received by the commission, or postmarked, after midnight December 31, but prior to midnight January 30, is accompanied by a penalty of \$25.

c. The application is fully completed with all necessary information, including proper disclosure of required continuing education and errors and omissions insurance.

d. The application fails to reveal grounds to deny a license, such as a criminal conviction or the revocation of a license in another jurisdiction.

4.5(3) Incomplete or untimely applications to renew. Renewal applications received by the commission, or postmarked, after midnight January 30 shall be treated as applications to reinstate an expired license under rule 193E—4.6(272C,543B).

a. Applications to renew or reinstate a salesperson license which are incomplete or which are not accompanied by the proper fee may be returned to the salesperson for additional information or fee.

b. Alternatively, the commission may retain the application and notify the applicant that the application cannot be granted without further information or fee.

4.5(4) Insufficient continuing education. Renewal applications which do not report completion of required continuing education, but which are otherwise timely and sufficient and accompanied with proper fee, shall be renewed in inactive status. In the event of a factual dispute regarding the salesperson's intent to renew in inactive status or a salesperson's compliance with continuing education requirements, the commission may deny the application and provide the applicant with an opportunity for hearing according to the procedures set forth in rules 193—7.39(546,272C) and 193E—18.13(543B).

4.5(5) Denial of application to renew. An application to renew may be denied on the grounds provided in Iowa Code chapter 543B and in rule 193—7.39(546,272C). The administrative processing of an application to renew shall not prevent the later initiation of a contested case to challenge a licensee's qualifications for licensure.

4.5(6) Renewal of inactive or suspended license. An inactive or suspended license must be timely renewed or it shall expire. The status of a license does not affect the requirement to renew.

193E—4.6(272C,543B) Reinstatement of an expired salesperson license. A real estate salesperson who fails to renew or fails to file a complete renewal application form by midnight January 30 of the first year following expiration may reinstate the license within three years of expiration by submitting

a complete and sufficient application accompanied by the regular renewal fee and an additional reinstatement fee of \$25 for each partial or full month following expiration. From the date of expiration to the date of reinstatement, the salesperson is not authorized to practice as a real estate salesperson in Iowa.

4.6(1) *Continuing education.* An application to reinstate an expired salesperson license must report that the salesperson either fully satisfied all required continuing education or has retaken and passed the salesperson examination. A salesperson holding an expired license who wishes to retake the salesperson examination must obtain written authorization from the commission to show at the examination site.

4.6(2) *Deposit of reinstatement fees.* Reinstatement fees collected under this rule shall be transmitted to the treasurer's office and credited to the education fund established in Iowa Code section 543B.54.

4.6(3) *Starting over.* A salesperson who fails to reinstate an expired license by December 31 of the third year following expiration shall be treated as if the former salesperson had never been licensed in Iowa. Such a former salesperson must start over in the licensing process and qualify and apply for a salesperson license.

4.6(4) *Reinstatement of a nonresident reciprocal salesperson license.* An expired salesperson license issued by reciprocity shall be reinstated as provided by this rule, except, in addition to the regular license fee, a \$25 reinstatement fee shall accompany a qualifying sufficient reciprocal application.

4.6(5) *Denial of application.* An application may be denied on the grounds provided in Iowa Code chapter 543B and in rule 193—7.39(546,272C). The administrative processing of an application shall not prevent the later initiation of a contested case to challenge a licensee's qualifications for licensure.

These rules are intended to implement Iowa Code chapters 17A, 272C and 543B.

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CHAPTER 5
LICENSEES OF OTHER JURISDICTIONS AND RECIPROCITY
[Prior to 9/4/02, see 193E—2.3(543B)]

193E—5.1(543B) Licensees of other jurisdictions. As provided in Iowa Code section 543B.21, a nonresident of this state may be licensed as a real estate broker or a real estate salesperson upon complying with all requirements of Iowa law and with all the provisions and conditions of Iowa Code chapter 543B and commission rules relative to resident brokers or salespersons.

5.1(1) A person licensed as a salesperson in another state or jurisdiction making application in Iowa by reciprocity or as provided in rule 193E—5.3(543B) shall qualify only for a salesperson license in Iowa.

5.1(2) A person licensed as a broker or broker associate in another state or jurisdiction making application in Iowa by reciprocity or as provided in rule 193E—5.3(543B) shall qualify only for the same type of broker or broker associate license in Iowa.

5.1(3) A person shall not perform any activities in Iowa as provided by Iowa Code chapter 543B without qualifying for and being issued a real estate license.

193E—5.2(543B) Nonresident application. Each applicant under rule 193E—5.3(543B) or under a reciprocal licensing agreement or memorandum must apply on forms provided by the commission as required by Iowa Code section 543B.16. The application shall include but not be limited to a certification of license from the state of original licensure containing all information required by Iowa Code section 543B.21 and an affidavit certifying that the applicant has reviewed and is familiar with and will be bound by the Iowa real estate license law and the rules of the commission.

193E—5.3(543B) License by Iowa-specific examination. A nonresident applicant licensed as a real estate salesperson or broker in a state or jurisdiction which does not have a reciprocal licensing agreement or memorandum with Iowa, or an applicant who does not qualify for reciprocal licensing, may be issued a comparable Iowa license by passing the Iowa portion of the examination under the following circumstances:

5.3(1) Broker. The person has been actively licensed as a broker or broker associate and the license has not been inactive or expired for more than six months immediately preceding the date of passage of the examination.

5.3(2) Salesperson. The person has been actively licensed as a salesperson and the license has not been inactive or expired for more than six months immediately preceding the date of passage of the examination.

5.3(3) The applicant must submit a written request for authorization to sit for the appropriate examination.

5.3(4) The applicant must submit certification of the applicant's current qualifying license from the licensing authority that issued the license.

193E—5.4(543B) Licensure by reciprocity. The commission may, as provided in Iowa Code section 543B.21, enter into specific written reciprocal licensing agreements or memorandums with other individual states or jurisdictions having similar licensing requirements and grant an Iowa license to licensees from those states or jurisdictions on the same basis as Iowa licensees are granted licenses by those states or jurisdictions.

5.4(1) The applicant shall not be a resident of Iowa.

5.4(2) A license issued pursuant to this rule must be based upon a nonresident salesperson or broker license issued by examination.

5.4(3) A license issued pursuant to this rule must be assigned to the same broker or firm as the nonresident license upon which it is based.

5.4(4) If an applicant establishes residency in Iowa, that person does not qualify for licensure by reciprocal licensing agreement or memorandum.

5.4(5) An Iowa license issued by reciprocity is based upon the nonresident license issued by examination in that other state or jurisdiction and must be issued to the same broker and location as the nonresident license. The nonresident broker and firm, if applicable, must also be licensed in Iowa.

5.4(6) A reciprocity agreement or memorandum of understanding is only a method to apply for licensure and does not grant any exception to mandatory license laws of Iowa or the other state or jurisdiction.

5.4(7) An Iowa licensee wishing to obtain a license in any other state or jurisdiction should contact that state's or jurisdiction's licensing board for information and applications. Contact information and a list of states and jurisdictions that have entered into reciprocal licensing agreements or memorandums with Iowa, including addresses and telephone numbers, are available on the commission's Web site located at <http://www.state.ia.us/irec>.

193E—5.5(543B) Renewal of a license issued by reciprocity. All renewal requirements for a real estate broker or salesperson license issued by examination shall apply to a license issued by reciprocity.

Continuing education reciprocity must be specifically provided for in the reciprocal license agreement or memorandum, or in a separate reciprocal continuing education agreement or memorandum.

193E—5.6(543B) Reinstatement of a license issued by reciprocity. All reinstatement requirements for a real estate broker or salesperson license issued by examination shall apply to a license issued by reciprocity, except that the reinstatement fee is \$25 with an original reciprocal license application.

5.6(1) Starting over. A broker or salesperson who fails to file a complete application to reinstate an expired license by midnight December 31 of the third year following expiration shall be treated as if the former broker or salesperson had never been licensed in Iowa.

5.6(2) A broker or salesperson must qualify for reciprocity in order to reinstate an expired reciprocal broker or salesperson license.

5.6(3) If the broker or salesperson has moved into Iowa and no longer qualifies for reciprocity, the expired license must be reinstated in the same manner as a license issued by examination as provided in rule 193E—3.6(272C,543B) for brokers and rule 193E—4.6(272C,543B) for salespersons.

193E—5.7(543B) Nonresident real estate offices and licenses required. All nonresident applicants for licensure in Iowa shall qualify for and obtain a license pursuant to Iowa Code section 543B.2(2) and rule 193E—7.1(543B).

5.7(1) If the applicant is a broker associate or salesperson of a nonresident broker, the nonresident employing broker must have an Iowa broker license.

5.7(2) If the applicant is employed by or otherwise associated with a nonresident real estate firm as defined in rule 193E—2.1(543B), that firm must apply and qualify for an Iowa license.

a. No firm as defined in rule 193E—2.1(543B) shall be granted an Iowa license unless at least one member or officer of the firm applies for and is granted an Iowa broker license.

b. Every member or officer of the firm and every employee or associated real estate licensee who acts as a real estate broker, broker associate, or salesperson in Iowa must apply for and be granted an Iowa license.

5.7(3) As provided by Iowa Code section 543B.22, a nonresident broker or firm is not required to maintain a definite place of business in Iowa if that broker or firm maintains an active place of business within the resident state or jurisdiction.

193E—5.8(543B) License as prerequisite. A person is prohibited from bringing action in Iowa courts for the collection of compensation for real estate services performed in Iowa without providing proof of Iowa real estate licensure, as required by Iowa Code section 543B.30.

193E—5.9(543B) Actions against nonresidents. The application for a nonresident license must be accompanied by an executed irrevocable written consent to suits and actions at law or in equity as provided in Iowa Code section 543B.23.

193E—5.10(543B) Nonresident continuing education. Nonresident licensees shall fully comply with all continuing education requirements unless a separate education agreement is in place between Iowa and the nonresident state or jurisdiction.

193E—5.11(543B) License discipline reporting required. If a nonresident Iowa licensee has a real estate license disciplined, suspended or revoked by any other state or jurisdiction, that disciplinary action will be considered prima facie evidence of violation of Iowa Code section 543B.29 or 543B.34 or both, and a hearing may be held to determine whether similar disciplinary action should be taken against the Iowa licensee. Failure to notify the commission of adverse action taken by another state or jurisdiction shall be cause for disciplinary action.

These rules are intended to implement Iowa Code chapters 17A, 272C and 543B.

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CHAPTER 6
TERMINATION AND TRANSFER

193E—6.1(543B) Terminating employment or association. When a licensee is discharged by the affiliated broker or the licensee terminates the employment or association with the affiliated broker, the licensee shall immediately cease all activities that require an active real estate license until such time as a new affiliated broker makes written request for the license and the license is reassigned to the new affiliated broker.

6.1(1) When a broker discharges a salesperson or broker associate, the broker shall comply with all requirements of Iowa Code section 543B.33 and immediately deliver or mail the discharged person's license to the commission. If the license is returned by mail, the releasing broker shall make reasonable effort to ensure that the commission receives the license within 72 hours of the discharge date.

6.1(2) The licensee may terminate the employment or association by providing written notice to the affiliated broker advising the effective date of the termination and requesting that the license be immediately returned to the commission. The affiliated broker shall not refuse to comply with the request. If the license is returned by mail, the releasing broker shall make every reasonable effort to ensure that the commission receives the license within 72 hours of the termination date.

6.1(3) If in the unlikely event that the license of a terminated or discharged salesperson or broker associate is misplaced or lost, this should not delay the transfer of the license to a new affiliating broker. The releasing broker shall provide written notification to the commission and attest that, if located, the license will be immediately shredded or otherwise destroyed. The releasing broker shall make every reasonable effort to ensure that the commission receives the written notice within 72 hours of the termination date.

193E—6.2(543B) Immediate transfer of license and required transfer form. All requests for immediate transfer of license must be made on the required license transfer form available from the commission. The license transfer form shall only be used for transferring the license from the affiliated broker to a new affiliated broker. This transfer form may only be used if the transferring licensee has obtained the required information from and dated signature of a new affiliating broker. The license transfer form shall not be used for licensees who are terminated or who quit prior to obtaining a new affiliating broker.

6.2(1) The immediate license transfer process involves three steps, and each step must be correctly completed in the proper order to qualify as a valid transfer. The steps are as follows:

a. Step 1. The transferring licensee must obtain certain identifying information and the signature of a new employing or affiliating broker.

b. Step 2. If a new affiliating broker has completed and signed step 1 of the form, the releasing broker must sign and date the transfer form and attach the old license of the transferring licensee to the form. The releasing broker shall retain copies for records to demonstrate compliance with Iowa Code section 543B.33.

c. Step 3. The transferring licensee must sign the transfer form, certifying that the information on the form is true and correct and acknowledging that providing false information would be a violation of Iowa Code section 543B.29(1), which could result in disciplinary action against the license.

6.2(2) After all three steps are completed, the new affiliating broker shall return the completed form and old license to the commission. If the form and license are returned by mail, the new affiliating broker shall make every reasonable effort to ensure that the commission receives the completed form and old license within 72 hours. To demonstrate compliance with this rule, the new affiliating broker shall retain copies of the completed transfer form and the old license until the new license has been reissued and received.

6.2(3) Transfer effective date. If all three steps to the transfer are completed in the required order, the effective date of the the transfer shall be the date of release from the releasing broker.

a. All signature dates must correspond to each of the three steps in the transfer process in the required order.

b. The releasing broker shall not sign a transfer form releasing a licensee unless a new affiliating broker has signed and dated the transfer form.

c. If the release date is prior to the effective date of the new affiliation, the required steps were not followed in the required order and the application does not qualify as an immediate transfer. The transfer effective date shall be the date of the new affiliation. The license will be placed on inactive status for that interim period when the transferring licensee does not have an affiliating broker and, as such, is prohibited from engaging in any real estate activity requiring an active license.

d. In the event the required transfer items are incomplete, the transfer shall not be effective until the date all items have been completed.

6.2(4) If all transfer steps are completed in the required order, the transferring licensee may begin working immediately and is not required to wait until a new license has been issued to the new affiliated broker. The new affiliated broker shall make a reasonable effort to deliver or mail, preferably by certified mail, the completed form and old license to the commission office to ensure that it is received within 72 hours. When the commission receives the completed form and old license, a new license will be reissued and mailed to the new affiliated broker with an effective date as provided in 6.2(3).

6.2(5) The required form for immediate transfer is available from the commission and on the commission's Web site at <http://www.state.ia.us/irec>. The following Application to Transfer Form is required to request the immediate transfer of a license pursuant to this rule:

IOWA REAL ESTATE COMMISSION 1918 S.E. Hulsizer Avenue, Ankeny, Iowa 50021 APPLICATION TO TRANSFER	
Notice: This form is to be completed <u>only</u> if a licensee is transferring from one firm or broker to another firm or broker. When this transfer form has been completed, it <u>must</u> be mailed or hand-delivered with the old license to the Commission without delay within 72 hours. DO NOT FAX. When the completed and correct transfer form and old license are received, a new license will be issued with an effective date of transfer of either (1) the effective date of the new affiliation, or (2) the date of release from the previous broker, whichever is later. There are three steps to transfer AND THEY <u>MUST</u> be completed in the order in which they appear on this form.	
Step 1 (To be completed by new affiliating broker)	
Name of transferring licensee _____	License number _____
Type of license _____ (Salesperson or Broker Associate)	
Effective date of new affiliation _____	
Business name _____	
Name of new broker _____	License number _____
(Print or type)	
Your signature _____	Telephone _____ Date _____
(New broker)	
Step 2 (To be completed by releasing broker)	
Name of releasing broker _____	License number _____
(Print or type)	
Business name _____	
The license of the transferring individual is attached to this form in compliance with the immediate return of a license to the Commission as required by Iowa Code section 543B.33, Change of employment.	
Your signature _____	Date of release _____
(Releasing broker)	
Step 3 (To be completed by transferring licensee)	
I, _____, hereby certify that the above information is true and correct.	
(Print name of transferring licensee)	

I further acknowledge that providing false information on this transfer form would be in violation of Iowa Code section 543B.29(1), fraud in procuring a license, which could result in disciplinary action against my license.

Your signature _____ Telephone _____ Date _____
(Signature of transferring licensee)

193E—6.3(543B) Broker authorized. Authorization from the following actively licensed brokers is required to return the license of a discharged or terminated salesperson or broker associate, to request that a license be issued, and to sign the license transfer form:

1. Sole-proprietor or single broker.
2. Broker officer of a corporation or firm.
3. Broker partner.
4. Designated broker in charge.
5. Broker in charge of a branch office.

These rules are intended to implement Iowa Code chapters 17A, 272C and 543B.

[Filed 8/9/02, Notice 6/26/02—published 9/4/02, effective 10/9/02]

CHAPTER 7
OFFICES AND MANAGEMENT

[Prior to 9/4/02, see 193E—Ch 1 and 193E—2.14(543B) to 193E—2.17(543B)]

193E—7.1(543B) Real estate offices and licenses required.

7.1(1) Every Iowa resident real estate firm or self-employed broker shall maintain an office for the transaction of business in the state of Iowa, which shall be open to the public during business hours or by appointment.

A nonresident Iowa real estate broker or firm is not required to maintain a definite place of business within Iowa, provided the nonresident broker or firm maintains an active place of business within the state or jurisdiction of domicile as provided in Iowa Code section 543B.22.

7.1(2) Sharing office space. It shall be acceptable for more than one broker to operate in an office at the same address if each broker maintains all records and trust accounts separate from all the others. Each broker shall operate under a business name, which clearly identifies the broker as an individual within the group of brokers.

7.1(3) Branch office. A resident Iowa real estate firm or proprietor maintaining a branch office shall display two branch office licenses in that location. One branch office license is issued in the name of the firm or proprietor and one is issued in the name of the designated broker or broker associate assigned to supervise the branch office. (EXCEPTION: A sole-proprietor broker who is the designated broker for a branch office location and not the main office location is required to display only one branch office license in that location.) The main office and every branch office shall be directly supervised by a broker or broker associate assigned to that location as the designated broker. No broker or broker associate shall be the designated broker of more than one location.

7.1(4) When a real estate brokerage firm closes, the principal broker or a designated representative shall follow procedures as provided in 193E—Chapter 8.

7.1(5) A licensed officer of a corporation or partnership may be licensed as an officer or partner of more than one corporation or partnership. The main or primary license for which the full license fee was paid must be maintained in active status to keep any additional licenses that were issued at a reduced fee active and in effect.

Continuing education is required only for renewal of the main or primary license.

7.1(6) When the designated broker of a branch office transfers to a different office, terminates employment, or otherwise ceases to be in charge of the branch location, the branch office license must be returned to the commission. A new designated broker for the branch must be assigned before a new branch license can be issued. If the branch office is assigned to a corporation or partnership, the corporation or partnership license displayed in the branch office must also be returned to the commission.

7.1(7) A broker associate employed or engaged to be in charge of the branch office shall have the same responsibilities of supervision of the licensees working from that location as are imposed on the employing, sponsoring, or affiliated broker.

7.1(8) Each actively licensed broker associate and salesperson shall be licensed under a broker.

7.1(9) A broker associate or salesperson shall not be licensed under more than one broker during the same period of time.

193E—7.2(543B) Notification required.

7.2(1) Partnerships, associations, and corporations are required to obtain a license before acting as a real estate broker. Failure of a broker to inform the commission within five working days that the broker has formed a new partnership, association or corporation, or has changed the type of the business, is prima facie evidence of a violation of Iowa Code section 543B.1.

7.2(2) Failure of a broker to inform the commission in writing within five working days of a change in type of license as proprietor, partner, officer or broker associate is prima facie evidence of a violation of Iowa Code sections 543B.1 and 543B.29(1).

7.2(3) Failure of a broker to inform the commission in writing within five working days of a change of address of a proprietorship, partnership, or corporation is prima facie evidence of a violation of Iowa Code section 543B.32.

7.2(4) Failure of a broker to return a license or make a reasonable effort to deliver or mail, preferably by certified mail, a license to the commission office to ensure that it is received within 72 hours after a salesperson or broker associate is discharged or terminates employment is prima facie evidence of a violation of Iowa Code section 543B.33.

7.2(5) Each real estate broker who returns a license to the commission office shall include the last-known permanent mailing address of the licensee.

7.2(6) Failure of a licensee to inform the commission in writing within five working days of a change of residence address or mailing address is prima facie evidence of a violation of Iowa Code sections 543B.16 and 543B.18.

7.2(7) When a broker is notified that a license is inactive, suspended, revoked, or canceled, the broker shall return the license or mail the license, preferably by certified mail, to the commission office and make every reasonable effort to ensure that the license is received by the commission within 72 hours after notification.

193E—7.3(543B) Suspended and revoked licenses. A suspended or revoked license must be returned to the commission as provided in Iowa Code section 543B.33 and subrule 7.2(7).

7.3(1) As of the effective date of a suspended or revoked license, the licensee shall not engage in any activity that requires a real estate license as defined in Iowa Code chapter 543B.

7.3(2) When a broker, corporation or partnership license is suspended or revoked, all licensees associated with or assigned to that broker, corporation or partnership shall automatically be placed on inactive status for the duration of the suspension or revocation, unless transferred to another broker.

a. The broker whose license is suspended or revoked shall return, before or immediately upon the effective date of the suspension or revocation, all licenses that are assigned to or associated with the broker or the firm as provided in Iowa Code section 543B.33 and subrule 7.2(7).

b. When a suspension or revocation is determined, the commission shall also determine if the corporation or partnership license shall be automatically placed on inactive status or canceled.

c. If the broker whose license is suspended or revoked is also the designated broker of a firm or branch office, that firm or branch office shall automatically be placed on inactive status until a new broker is designated.

d. If the broker whose license is suspended or revoked is the only licensed officer of a corporation, the corporation license will automatically be placed on inactive status.

7.3(3) A licensee whose license is suspended or revoked may receive compensation during the period of suspension or revocation only for those acts performed and for which compensation was earned when the person was actively licensed prior to the effective date of the suspension or revocation.

This rule does not determine if a licensee is entitled to compensation; such entitlement would depend upon the licensee's written employment or association agreement with the former affiliated broker and a matter of contract law.

7.3(4) All listings and property management agreements must be 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, shall be 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 may not sell or assign listings or management agreements to another broker without the written consent of the owner of the property, and any sale or assignment of listings or management agreements must be completed prior to the effective date of the order.

7.3(5) A broker whose license is suspended or revoked may not finalize any pending closings. This responsibility must be given to another broker, an attorney, a financial institution, or an escrow company.

a. Transfer of this responsibility shall be done with the written approval of all parties to the transaction.

b. All parties to the transaction shall be advised of the facts concerning the situation and shall be provided the name, address, and telephone number of the responsible entity where all trust and escrow moneys will be held, with the written approval of all parties.

7.3(6) A broker whose license is suspended or revoked is prohibited from advertising real estate in any manner as a broker. All advertising, including but not limited to signs, must be removed or covered within ten calendar days after the effective date of the suspension or revocation.

The real estate brokerage telephone must not be answered in any manner to indicate the broker is active in the real estate business.

193E—7.4(543B) Prohibited practices. For purposes of this rule only the term “real estate licensee” shall mean “real estate broker or real estate salesperson” as defined in Iowa Code chapter 543B. A licensee participating in any of the practices described in this rule shall be deemed to be engaging in unethical conduct and a practice harmful or detrimental to the public within the meaning of Iowa Code section 543B.29(3).

7.4(1) An arrangement in which a real estate licensee requires or conditions, in connection with the sale of a lot, that the real estate licensee receive from the homebuilder an exclusive right to sell or list the house to be constructed on the lot.

7.4(2) An arrangement in which a real estate licensee agrees to sell lots on behalf of a developer on the condition that the developer require each homebuilder purchasing such a lot to list the house to be constructed with the real estate licensee.

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

7.4(4) Any arrangement pursuant to which the sale of real estate to a prospective purchaser is conditioned upon the listing of real estate owned by the prospective purchaser with the real estate licensee.

7.4(5) An arrangement in which a real estate licensee, in connection with the sale of a lot to a consumer, requires the consumer to use a specified homebuilder to build the house to be constructed on the lot.

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 to the real estate licensee.

7.4(7) Any arrangement pursuant to which a real estate licensee who is affiliated with a mortgage broker, bank, savings and loan association or other financial institution benefits from the practice by the affiliated financial institution of granting mortgage loans or any other loan or financial services or the availability of other benefits directly or indirectly conditioned upon the use of the real estate services of the affiliated licensee.

7.4(8) Any arrangement prohibited by Iowa Code section 543B.60A. An Iowa licensee is prohibited from participating in any such marketing plan with a person who is licensed or otherwise authorized to engage in the real estate business in another state or foreign country.

This rule is intended only to regulate the licensing of real estate licensees in the state of Iowa. This rule is not intended nor should it be interpreted to supplant Iowa Code chapter 553 (The Iowa Competition Law) or as authorizing or approving business practices which are not specifically prohibited in this rule. The commission, upon receipt of any formal written complaint filed against a licensee alleging a violation of this rule, shall, in addition to evaluating such complaint for license revocation or suspension under Iowa Code chapter 543B, forward a copy of such complaint to the attorney general of the state of Iowa and to the United States Attorney for investigation and appropriate action.

193E—7.5(543B) Loan finder fees. The acceptance of a fee or anything of value by a real estate licensee from a lender or financing company for the referral or steering of a client to the lender for a loan shall

be considered not in the best interest of the public and shall constitute a violation of Iowa Code sections 543B.29(3) and 543B.34(8).

193E—7.6(543B) Lotteries prohibited. Licensees shall not engage in lotteries and schemes of sales involving selling of certificates, chances or other devices, whereby the purchaser is to receive property to be selected in an order to be determined by chance or by some means other than the order of prior sale, or whereby property more or less valuable will be secured according to chance or the amount of sales made, or whereby the price will depend upon chance or the amount of sales made, or whereby the buyer or tenant may or may not receive, rent, or lease any property. Such activities are declared to be methods by reason of which the public interests are endangered.

193E—7.7(543B) Broker required to furnish progress report. After an offer to buy has been made by a buyer and accepted by a seller, either party may demand at reasonable intervals and the broker shall furnish a detailed statement showing the current status of the transaction.

193E—7.8(543B) Disclosure of licensee interest, acting as a principal, and status as a licensee. A licensee shall not act in a transaction on the licensee's own behalf, on behalf of the licensee's immediate family, including but not limited to a spouse, parent, child, grandparent, grandchild, brother, or sister, or on behalf of the brokerage, or on behalf of an organization or business entity in which the licensee has an interest, including an affiliated business arrangement as defined in 7.9(1), unless the licensee provides written disclosure of that interest to all parties to the transaction. Disclosure required under this rule must be made at the time of or prior to the licensee's providing specific assistance to the party or parties to the transaction. Copies of the disclosure may be provided in person or by mail, as soon as reasonably practical. If no specific assistance is provided, disclosure shall be provided prior to the parties' forming a legally binding contract, either prior to an offer made by the buyer or tenant or prior to an acceptance by the seller or landlord, whichever comes first.

7.8(1) Licensee acting as a principal. A licensee shall not acquire any interest in any property, directly or indirectly, nor shall the licensee sell any interest in which the licensee, directly or indirectly, has an interest without first making written disclosure of the licensee's true position clear to the other party. Satisfactory proof of this disclosure must be produced by the licensee upon request of the commission. Whenever a licensee is in doubt as to whether an interest, relationship, association, or affiliation requires disclosure under this rule, the safest course of action is to make the written disclosure.

7.8(2) Status as a licensee. Before buying, selling, or leasing real estate as described above, the licensee shall disclose in writing any ownership, or other interest, which the licensee has or will have and the licensee's status to all parties to the transaction. An inactive status license shall not exempt a licensee from providing the required disclosure.

7.8(3) Dual capacity. The licensee shall not act in a dual capacity of agent and undisclosed principal in any transaction.

193E—7.9(543B) Financial interest disclosure required. A licensee must disclose to a client any financial interest the licensee or brokerage has in any business entity to which the licensee or brokerage refers a client for any service or product related to the transaction. A licensee who has any affiliated business arrangement or relationship with any provider of settlement services, as defined below, and directly or indirectly refers business to that provider or affirmatively influences the selection of that provider shall disclose the arrangement and any financial interest to the person whose business is being referred or influenced. The required disclosure shall be acknowledged by the separate signatures of the person or persons whose business is being referred or influenced. The disclosure shall be given and signed before or at substantially the same time that the business is referred or the provider is selected. If the disclosure is made on a separate form, the licensee shall retain a copy of the signed disclosure in the transaction file for a period of five years after the execution.

7.9(6) The term “direct ownership” means the holding of legal title to an interest in a provider of settlement services except where title is being held for the beneficial owner.

7.9(7) The term “control” as used in the definition of “affiliate relationship” means that a person:

- a.* Is a general partner, officer, director, or employer of another person;
- b.* Directly or indirectly or acting in concert with others, or through one or more subsidiaries, owns, holds with power to vote, or holds proxies representing more than 20 percent of the voting interests of another person;
- c.* Affirmatively influences in any manner the election of a majority of the directors of another person; or
- d.* Has contributed more than 20 percent of the capital of the other person.

193E—7.10(543B) Agency-designated broker responsibilities. The following conditions and circumstances, together with the education and experience of licensed and unlicensed employees and independent contractors, shall be considered when determining whether or not the designated broker has met the supervisory responsibilities as set forth by Iowa Code section 543B.62, subsection (3), paragraph “b.”

7.10(1) When making a determination, the commission may consider, but is not limited to consideration of, the following:

- a.* Availability of the designated broker/designee to assist and advise regarding brokerage-related activities;
- b.* General knowledge of brokerage-related staff activities;
- c.* Availability of quality training programs and materials to licensed and unlicensed employees and independent contractors;
- d.* Supervisory policies and practices in the review of competitive market analysis, listing contracts, sales contracts and other contracts or information prepared for clients and customers;
- e.* Frequency and content of staff meetings;
- f.* Written company policy manuals for licensed and unlicensed employees and independent contractors;
- g.* Ratio of supervisors to licensed employees and independent contractors; and
- h.* Assignment of an experienced licensee to work with new licensees.

7.10(2) The designated broker shall disseminate, in a timely manner, to licensed employees and independent contractors all regulatory information received by the brokerage pertaining to the practice of real estate brokerage.

193E—7.11(543B) Supervision required. An employing or affiliated broker is responsible for providing supervision of any salesperson or broker associate employed by or otherwise associated with the broker as a representative of the broker. The existence of an independent contractor relationship or any other special compensation arrangement between the broker and the salesperson or broker associate shall not relieve either the broker or the salesperson or broker associate of duties, obligations or responsibilities required by law.

7.11(1) Each salesperson and broker associate shall keep the broker fully informed of all activities being conducted on behalf of the broker and any other activities that might impact the broker’s responsibilities. However, the failure of the salesperson or broker associate to keep the broker fully informed shall not relieve the broker of duties, obligations or responsibilities required by law.

7.11(2) The activities of a salesperson or broker associate acting as a principal in the sale, lease, rental, or exchange of property owned by the licensee could impact the salesperson’s or broker associate’s license and the license of the employing or affiliated broker.

- a.* When a licensee is acting as a principal, the licensee shall keep the employing or affiliated broker fully informed of all activities.
- b.* While this rule does not require that a licensee list property owned by the licensee with the employing or affiliated broker, the broker may require as a condition of employment or affiliation that the licensee list the property with the employing or affiliated broker or pay a commission.

7.11(3) A broker associate, as defined in Iowa Code section 543B.5(5) and rule 193E—2.1(543B), is a broker employed by or otherwise associated with another broker as a salesperson. A broker associate is subject to the provisions of Iowa Code sections 543B.24 and 543B.33 and commission rules pertaining to salespersons during the time the broker remains a broker associate.

7.11(4) A broker who sponsors a salesperson during the salesperson's first year of licensure must be able to demonstrate that the broker has the time available and experience necessary to adequately supervise an inexperienced salesperson.

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

7.12(1) A former employing or affiliated broker may pay a commission 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 was earned while the broker associate or salesperson was actively licensed and assigned to the former broker. Whether or not a commission 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 if a commission is earned or if a commission is to be paid.

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

7.12(3) An Iowa real estate broker may pay a commission or fee to or receive a commission or fee from a nonresident broker who is actively licensed in the broker's resident state but not licensed in Iowa. The nonresident broker shall take 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) Upon the termination of association or employment with the affiliated broker or firm, the broker associate or salesperson shall not take or use any written listing or brokerage agreements secured during the association or employment. Said listings and brokerage agreements shall remain the property of the broker or firm and may be canceled only by the broker and the seller, unless the terms of the listing or brokerage agreement state otherwise.

193E—7.13(543B) Support personnel for licensees; permitted and prohibited 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 broker and the affiliated licensee are responsible for supervising the acts or activities of the personal assistant; however, the affiliated licensee shall have the primary responsibility for supervision. Unless the support person holds a real estate license, the support person may not 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 require discretion or the exercise of the licensee's own judgment. Personal assistants shall be considered support personnel.

7.13(1) Individuals actively licensed with one firm or broker may not work as support personnel for a licensee affiliated with another firm or broker. Individuals with an inactive status license may work as support personnel for a licensee, but shall not participate in any activity that requires a real estate license.

7.13(2) Any real estate brokerage firm or broker that allows an affiliated licensee to employ, or engage under an independent contractor agreement, support personnel to assist the affiliated licensee in carrying out brokerage activities must comply with the following:

- a. Implement a written company policy authorizing the use of support personnel by licensees;
- b. Specify in the written company policy, which may incorporate the duties listed in 7.13(4), any duties that the support personnel may perform on behalf of the affiliated licensee;
- c. Ensure that the affiliated licensee and the support personnel receive copies of the duties that support personnel may perform.

7.13(3) Broker supervision and improper use of license and office. While individual and designated brokers shall be responsible for supervising the real estate-related activities of all support personnel, an

affiliated licensee employing a personal assistant shall have the primary responsibility for supervision of that personal assistant. A broker shall not be 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 broker's specific written policies or instructions;
- b. Reasonable procedures have been established to verify that adequate supervision was being provided;
- c. The broker, upon hearing of the violation, attempted to prevent or mitigate the damage;
- d. The broker did not participate in the violation; and
- e. The broker did not attempt to avoid learning of the violation.

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 and may not perform.

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

(1)	Answer the telephone, provide information about a listing to other 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 broker;
(8)	Place advertisements in magazines, newspapers, and other media as directed by the supervising 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 broker;
(11)	Monitor personnel files;
(12)	Compute commission 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 required 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: <ol style="list-style-type: none"> 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.

b. Prohibited 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, exchanges, or property management;
(2)	Independently hosting open houses, kiosks, home show booths, or fairs;
(3)	Preparing promotion materials or advertisements without the review and approval of licensee and supervising broker;
(4)	Showing property 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, management fee, or referral fee on behalf of a licensee;
(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, 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.

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

193E—7.15(543B) Presenting purchase agreements. All written offers to purchase received by a listing broker or listing agent shall be promptly presented to the seller for formal acceptance or rejection. The formal acceptance or rejection of the offer shall be promptly communicated to the prospective buyers. Unless there is written agreement between the seller and the listing broker directing otherwise, the listing broker shall be required to present back-up offers until the transaction has closed.

7.15(1) A customer's agent seeking compensation from the listing broker shall not prepare an offer to purchase on the property without first obtaining authorization and agreement from the listing broker.

7.15(2) A real estate licensee shall not induce another to seek to alter, modify, or change another licensee's fee or commission for real estate brokerage services without that licensee's prior written consent.

7.15(3) Immediately upon receiving an offer to purchase signed and dated by the buyer with consideration, if any, the listing agent shall provide a copy of the offer to purchase to the buyer as a receipt.

7.15(4) A customer's agent or representative shall not 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.

7.15(5) A listing agent shall not refuse to permit a customer'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 agent shall refuse to show a property listed by that agent or otherwise deal with a represented

customer who requests that the customer's agent or representative be present at any step in the real estate transaction, except as provided in this subrule.

a. The customer'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 agent or representative from being present when the offer is presented, it is not unlawful for the customer's agent or representative to be present.

c. Compliance with this rule does not require or obligate a listing broker to share any commission or to otherwise compensate a customer's agent.

These rules are intended to implement Iowa Code chapters 17A, 272C and 543B.

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² Effective date of 1.31(543B) delayed 70 days by the Administrative Rules Review Committee at its meeting held July 8, 1993.

³ Effective date of 1.1, definition of “referral fee”; 1.41, introductory paragraph; and subrules 1.41(3) and 1.41(7) delayed 70 days by the Administrative Rules Review Committee at its meeting held April 7, 2000; rescinded IAB 6/28/00, effective 6/9/00.

CHAPTER 8
CLOSING A REAL ESTATE BUSINESS

193E—8.1(543B) Closing a real estate firm. The following steps are required for the voluntary closing of a real estate brokerage firm. The individual broker or the designated broker shall:

8.1(1) Notify the commission in writing upon closing the firm. The following information may be included:

- a. The date the firm closed or will close;
- b. The location where records and files will be stored for a minimum of five years; and
- c. The name, address, and telephone number of the custodian who will be storing the records and files;

8.1(2) Notify all licensees associated with the firm in writing of the effective date of the closing. The former affiliated broker shall make every reasonable effort to return the licenses of any licensees associated with the firm at the time of closing to the commission within the required 72 hours, with written notice that the firm is closed;

8.1(3) Notify all listing and management clients as well as parties and cobrokers to existing contracts, in writing, advising of the date the firm will close. All listing and management clients must be advised in writing that they may enter into a new listing or management agreement with the broker of their choice;

8.1(4) Remove all advertising signs from all properties that were listed with or managed by the firm. Arrange to cancel all advertising in the name of the firm, including office signs, Internet, and telephone listing advertisements;

8.1(5) Maintain all escrow or trust accounts until all moneys are transferred to the lending institution, an escrow company or an attorney for closing of the transaction, or are otherwise properly disbursed as agreed to in writing by the parties having an interest in the funds; and

8.1(6) Arrange for pending contracts to be closed by a lending institution, an escrow company or an attorney. In the case of a sale, transfer or merger of an existing brokerage, the acquiring broker may close the pending transactions acquired from the selling broker after having first obtained the express written consent of all parties to the transactions. The broker shall notify all parties involved in pending transactions as to the name, address, and telephone number of the closing agent.

193E—8.2(543B) Involuntary closing of a sole-proprietor brokerage. Upon the death or disability of a sole-proprietor broker in which the affairs of the broker cannot be carried on, the following steps are required for closing the real estate brokerage business:

8.2(1) All licensees associated with the broker must cease all brokerage activity until their licenses have been transferred to another broker;

8.2(2) The executor or legal representative of the broker's estate, if an attorney or a broker, may conclude pending business; and

8.2(3) The administrator or executor of the broker's estate or the legal representative of the broker may follow the procedures established in rule 193E—8.1(543B) for voluntary closing.

193E—8.3(543B) Involuntary closing of a corporation, partnership, or association brokerage firm.

8.3(1) In the event of an involuntary closing of a brokerage firm as a result of the death or incapacity of one or more of the licensed broker officers, broker partners or broker associates of a real estate corporation, partnership or association in which the affairs of the broker, partnership, corporation or association cannot be carried on, the following steps are required for closing the real estate brokerage business:

a. All licensees associated with the firm must cease all brokerage activity until their licenses have been transferred to another broker;

b. The executor of the broker's estate, if an attorney, or the legal representative of the firm may conclude pending business; and

c. The administrator or executor of the broker's estate or the legal representative of the broker may follow the procedures established in rule 193E—8.1(543B) for voluntary closing.

8.3(2) In the event of the death or incapacity of a designated broker for a firm, the affairs of the firm may be carried on by naming a new designated broker. The commission must be notified of the change within 72 hours.

These rules are intended to implement Iowa Code chapters 17A, 272C and 543B.

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CHAPTER 9

FEES

[Prior to 9/4/02, see 193E—2.9(543B)]

193E—9.1(543B) Fees.**9.1(1) Original license or renewal.**

Broker license	\$170
Additional officer or partner license	\$ 50
Firm license	\$170
Branch office license	\$ 50
Trade name license	\$ 50
Salesperson license	\$125

9.1(2) Fee for renewal of broker and salesperson license between January 1 and January 30 following expiration of license is the regular renewal fee plus \$25 reinstatement fee.

Broker license	\$195
Salesperson license	\$150

Reinstatement fee is not applicable to a firm license, additional officer license, additional partner license, trade name license, or branch office license.

9.1(3) Fee for certification of license is \$25.

193E—9.2(543B) Refunds and bad checks.

9.2(1) Fees remitted with an application for license will be refunded if the commission finds the applicant is not qualified for a license.

9.2(2) Fees will not be refunded for the unexpired term of a license that has been issued and is in effect.

9.2(3) A fee remitted in error will be refunded if it is received as a separate check. If not received as a separate check, a fee remitted in error will be refunded if a written request is received within 30 days of receipt of the fee.

9.2(4) Payment of a fee with a bad check shall be prima facie evidence of a violation of Iowa Code section 543B.29(1) or 543B.34(8) or both.

9.2(5) If a bad check is received for an original license, the application for license shall be deemed incomplete and the license null and void.

9.2(6) If a bad check is received for renewal of a license, the application shall be deemed incomplete and the license issued for the new term shall be deemed null and void. If a replacement check or fee is not filed with the commission by the date of expiration of the license (December 31), the appropriate reinstatement fee shall be added to the unpaid renewal fee.

193E—9.3(543B) Examination fee. The examination fee is paid directly to the testing service at the prevailing rate established by contract between the commission and the testing service.

These rules are intended to implement Iowa Code section 543B.27.

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CHAPTER 10
ADVERTISING

[Prior to 9/4/02, see 193E—Ch 1]

193E—10.1(543B) Advertising. A broker shall not advertise to sell, buy, exchange, rent, or lease property in a manner indicating that the offer to sell, buy, exchange, rent, or lease the property is being made by a private party not engaged in the real estate business, and no real estate advertisement shall show only a post office box number, telephone number or street address. Every broker, when advertising real estate, shall use the regular business name or the name under which the broker is licensed, and shall affirmatively and unmistakably indicate that the party is a real estate broker 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 shall clearly reveal in all advertising that the broker is the licensed individual who owns the entity using the franchise or trade name.

10.1(1) Advertising shall include all forms of identification, representation, promotion and solicitation disseminated in any manner and by any means of communication to the public for any purpose related to licensed real estate activity. Forms of advertising shall include, but not be limited to, real estate brokerage checks, letterhead, and business cards.

10.1(2) Real estate advertising shall not be misleading or deceptive or intentionally misrepresent any property, terms, values, or policies and services of the brokerage.

10.1(3) All advertising shall be conducted under the supervision of the broker. The broker shall ensure the accuracy of the information and, upon becoming aware of a material error or an advertisement that is in violation of this chapter or Iowa Code chapter 543B, the broker shall promptly correct the error or problem within ten calendar days. If the advertising cannot be corrected within ten calendar days, the broker shall make every reasonable effort to initiate the corrective measures necessary to correct the error or problem as soon as possible.

10.1(4) A licensed firm advertising or marketing on a site on the Internet that is either owned by or controlled by the licensed firm must include the following data on each page of the site on which the firm's advertisement or information appears:

- a. The firm's name as registered with the commission (abbreviations are not permitted);
- b. The city and state in which the firm's main office is located; and
- c. The states in which the firm holds a real estate brokerage license.

10.1(5) A licensee advertising or marketing on a site on the Internet that is either owned by or controlled by the licensee must include the following data on each page of the site on which the licensee's advertisement or information appears:

- a. The licensee's name;
- b. The name of the firm with which the licensee is affiliated as that firm name is registered with the commission (abbreviations are not permitted);
- c. The city and state in which the licensee's office is located; and
- d. The states in which the licensee holds a real estate broker or salesperson license.

10.1(6) A firm using any Internet electronic communication for advertising or marketing, including but not limited to E-mail, E-mail discussion groups, and bulletin boards, must include the following data on the first or last page of all communications:

- a. The firm's name as registered with the commission (abbreviations are not permitted);
- b. The city and state in which the firm's main office is located; and
- c. The states in which the firm holds a real estate brokerage license.

10.1(7) A licensee using any Internet electronic communication for advertising or marketing, including but not limited to E-mail, E-mail discussion groups, and bulletin boards, must include on the first or last page of all communications the following data:

- a. The licensee's name;
- b. The name of the firm with which the licensee is affiliated as that firm name is registered with the commission (abbreviations are not permitted);
- c. The city and state in which the licensee's office is located; and

d. The states in which the licensee holds a real estate broker or salesperson license.

193E—10.2(543B) Advertising under own name. Salespersons and broker associates are prohibited from advertising under their own names unless they are the owners of the property they are advertising for sale, rent, lease or exchange, and on which no brokerage fees are to be paid. The sale must be completely a “for sale by owner” transaction. The property cannot be listed or advertised in any way that would make it appear to be listed with a brokerage. The affiliated licensee cannot function in any capacity that requires a real estate license, and the licensee shall be responsible for all advertising conducted on the licensee’s own behalf.

193E—10.3(543B) Signs on property. Placing a sign on any property offering it for sale, rent, lease, or exchange without the written consent of the owner shall not be considered in the best interest of the general public.

10.3(1) When a listing expires, unless a new written listing or extension is obtained, the licensee shall immediately cease advertising and active marketing of the property. The licensee shall make every reasonable effort to remove signs as quickly as possible.

10.3(2) The licensee shall make every reasonable effort to remove signs from the property after the transaction is closed. Sold signs and other signs shall not be left on properties without the written consent of the new owner of record.

These rules are intended to implement Iowa Code chapters 17A, 272C and 543B.

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CHAPTER 11
BROKERAGE AGREEMENTS AND LISTINGS

[Prior to 9/4/02, see 193E—Ch 1]

193E—11.1(543B) Listing brokerage agreements. All listing agreements shall 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 to be paid, the signatures of all parties concerned and a definite expiration date. The agreement shall contain 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 or exclusive right to sell listing shall clearly indicate that it is such an agreement. A legible copy of every written listing agreement or other written authorization shall be given to the owner of the property by a licensee as soon as reasonably practical after the signature of the owner is obtained.

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

a. However, if the owner 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.

b. If the owner initiates the discussion, the licensee may inform the owner that the owner must allow the current listing 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 shall not negotiate a sale, exchange, or lease of real property directly with an owner if it is known that the owner 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 listing agreement shall not be assigned, sold, or otherwise transferred to another broker without the express written consent of all parties to the original agreement.

11.1(4) Net listing prohibited. No licensee shall make or enter 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. The taking of a net listing shall be unprofessional conduct and shall constitute a violation of Iowa Code sections 543B.29(3) and 543B.34(8).

11.1(5) A real estate licensee shall not induce another to seek to alter, modify, or change another licensee's fee or commission for real estate brokerage services without that licensee's prior written consent.

11.1(6) Any commission or fee in any listing agreement is fully negotiable among the parties to that listing agreement. Once the parties to a listing agreement have agreed to a commission or fee, no licensee other than a party to the listing agreement shall attempt to alter, modify, or change or induce another person to alter, modify or change a commission or fee that has previously been agreed upon without the prior written consent of the parties to that listing agreement.

193E—11.2(543B) Enforcing a protective clause. To enforce a protective clause beyond the expiration of an exclusive listing contract, there must be a provision for the protective clause in the listing contract which establishes a definite protection period, and the broker must furnish to the owner prior to the expiration of the listing the names and addresses of persons to whom the property was presented during the active term of the listing and for whom protection is sought.

193E—11.3(543B) Brokerage agreements. All brokerage agreements shall be 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 shall not 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.

11.3(1) Every written brokerage agreement shall include, at a minimum, the requirements set forth in Iowa Code section 543B.57 and the following provisions:

a. All listing contracts and all brokerage agency contracts shall contain a statement disclosing the brokerage policy on cooperating with and compensating other brokerages whether the brokerage is acting as subagent or the other parties' agent in the sale, lease, rental, or purchase of real estate, including whether the brokerage intends to share the compensation with other brokerages. Such disclosure shall serve 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 shall comply with Iowa real estate law and commission rules including, but not limited to, rules 193E—11.1(543B) and 11.4(543B) and 193E—Chapter 15.

11.3(2) No licensee shall make or enter 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.

11.3(3) The taking of a net brokerage agreement shall be unprofessional conduct and a practice that is harmful or detrimental to the public and shall constitute a violation of Iowa Code sections 543B.29(3) and 543B.34(8).

11.3(4) Duration of relationship. The relationships shall commence at the time of the brokerage agreement and shall 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. 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 shall end at the earlier of the following:

- a.* Any date of expiration agreed upon by the parties; or
- b.* Any termination by written agreement of the parties.

11.3(5) 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 shall have the duty after termination, expiration, completion, or performance of the brokerage agreement to:

- a.* Account for all moneys and property related to and received during the engagement; and
- b.* Keep confidential all information received during the course of the engagement which was made confidential by request or instructions from the engaging party or is otherwise confidential by statute or rule.

11.3(6) 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 by the sharing or splitting of a commission or compensation between brokers.

a. Payment of compensation shall not be construed to determine or establish an agency relationship. The payment of compensation to a broker does not determine whether a brokerage relationship has been created between any broker and a seller, landlord, buyer, or tenant paying such compensation.

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

(1) A seller's or landlord's agent may share the commission or other 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 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 shall not propose to the buyer's or tenant's agent that such seller's or landlord's agent may be compensated by sharing compensation paid by such buyer or tenant.

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

c. A broker may be compensated by more than one party for services in a transaction if the parties have consented in writing to such multiple payments prior to entering into a contract to buy, sell, lease, or exchange.

d. A licensee shall not accept, receive or charge an undisclosed commission for a transaction.

e. A licensee shall not give or pay an undisclosed commission 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. A licensee shall not pay any undisclosed rebate to any party to a transaction.

g. A licensee shall not give any undisclosed credit against commission due from a client or licensee to any party to a transaction.

h. A licensee shall not 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. The provisions of these rules do not apply to a gratuitous gift, such as flowers or a door knocker, to a buyer or tenant subsequent to closing and not promised or offered as an inducement to buy or lease, as long as any client relationship has terminated.

j. The provisions of these rules do not apply to a free gift, such as prizes, money, or other valuable consideration, to a potential party to a transaction or lease prior to the parties' signing a contract to purchase or lease and not promised or offered as an inducement to sell, buy, or lease, as long as no client relationship has been established with the buyer or lessee.

11.3(7) Solicitation of brokerage agreements. A licensee shall not 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 may not be assigned, sold, or otherwise transferred to another broker without the express written consent of all parties to the original agreement.

11.3(8) Any commission 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 or fee, no licensee other than a party to that brokerage agreement shall attempt to alter, modify, or change or induce another person to alter, modify, or change a commission or fee that has previously been agreed upon without the prior written consent of the parties to that brokerage agreement.

11.3(9) A real estate licensee shall not induce another to seek to alter, modify, or change another licensee's fee or commission for real estate brokerage services without that licensee's prior written consent.

11.3(10) A commission split agreement between brokers should be a separate document and not included in the purchase agreement. A purchase agreement should not be made contingent upon the selling broker's receiving a certain percentage of the listing broker's commission.

193E—11.4(543B) Terms or conditions. A licensee shall not 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 shall be responsible to ensure that all preprinted documents and forms used are in compliance with these rules.

193E—11.5(543B) Distribution of executed instruments. Upon execution of any instrument in connection with a real estate transaction, a licensee shall, as soon as practicable, deliver a legible copy of the original instrument to each of the parties thereto. It shall be the responsibility of the licensee to

prepare sufficient copies of such instruments to satisfy this requirement. The broker shall retain copies for five years.

193E—11.6(543B) Rebates and inducements.

11.6(1) A licensee shall not pay a commission, any part of a commission, or valuable consideration to an unlicensed third party for performing brokerage functions or engaging in any activity that requires 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 requires a real estate license, are prohibited.

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

11.6(3) A licensee may present a gratuitous gift, such as flowers or a door knocker, to the buyer or tenant subsequent to closing and not promised or offered as an inducement to buy or lease. The permission and disclosure requirements of rule 193E—11.3(543B) do not apply as long as any client relationship has terminated.

11.6(4) A licensee may present free gifts, such as prizes, money, or other valuable consideration, to a potential party to a transaction or lease, prior to that party's signing a contract to purchase or lease and not promised or offered as an inducement to buy or lease. It is the licensee's responsibility to ensure that the promotion is in compliance with other Iowa laws, such as gaming regulations. The permission and disclosure requirements of rule 193E—11.3(543B) do not apply as long as no client relationship has been established with the buyer or lessee.

11.6(5) The offering by a licensee of a free gift, prize, money, or other valuable consideration as an inducement shall be free from deception and shall not serve to distort the true value of the real estate service being promoted.

11.6(6) A licensee may make donations to a charity, or other not-for-profit organization, for each listing or closing, or both, that the licensee has during a specific time period. The receiving entity may be selected by the licensee or by a party to the transaction. The contribution may be in the name of the licensee or in the name of a party to the transaction. Contributions are permissible only if the following conditions are met:

- a.* There are no restrictions placed on the payment;
- b.* The donation is for a specific amount;
- c.* The receiving entity does not act or participate in any manner that would require a license;
- d.* The licensee exercises reasonable care to ensure that the organization or fund is a bona fide nonprofit;
- e.* The licensee exercises reasonable care to ensure that the promotional materials clearly explain the terms under which the donation will be made; and
- f.* All required disclosures are made.

193E—11.7(543B) New construction. A contract with a builder to construct or attach personal property or other type of structure to land and thereby produce an improvement to real estate is a real estate transaction. A licensee shall make written disclosure revealing that the licensee and the licensee's broker or brokerage firm will receive a commission, compensation, or valuable consideration for its efforts in the transaction, as required by 11.3(6) "d." Written disclosure is required regardless of the type of representation provided by the licensee or if the licensee provides no representation.

These rules are intended to implement Iowa Code chapters 17A, 272C and 543B.

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CHAPTER 12
DISCLOSURE OF RELATIONSHIPS

[Prior to 9/4/02, see 193E—Ch 1]

193E—12.1(543B) Written company policy required. Every licensed sole-proprietor single broker, firm, partnership, limited liability company, association, or corporation shall have a written company policy. Regardless of the type or types of agency relationships offered, a written company policy is required.

12.1(1) The written company policy shall identify and describe the types of real estate brokerage relationships in which the broker and affiliated licensees may engage with seller, landlord, buyer, or tenant as a part of any real estate brokerage business activities.

12.1(2) In addition, every real estate brokerage that offers representation to both buyers and sellers, and tenants and landlords, must also specifically address the following:

- a.* The appointed agent's policy and brokerage procedures intended to prevent any mishandling of information through both formal and informal sharing of information within the brokerage; and
- b.* The arrangement of brokerage office space and the personal relationships of affiliated licensees who are representing clients with adverse interests.

12.1(3) A broker shall not be required to offer or engage in more than one type of brokerage relationship as enumerated in rules 193E—12.3(543B) to 193E—12.5(543B).

193E—12.2(543B) Disclosure of agency.

12.2(1) A licensee shall not represent any party or parties to a real estate transaction or otherwise act as a real estate broker or salesperson unless that licensee makes disclosure to all required parties to the transaction identifying which party or parties, if any, that licensee represents in the transaction. Disclosure pursuant to this rule shall be made by the licensee at the time the licensee provides specific assistance to the client or nonrepresented customer.

12.2(2) Verbal disclosure required. The disclosure required by 12.2(1) must be made verbally by the licensee prior to the licensee's providing specific assistance to the client or nonrepresented customer. A change in the licensee's representation that makes the initial verbal disclosure incomplete, misleading, or inaccurate shall require that a new verbal disclosure be made immediately.

12.2(3) Written disclosure required. The written disclosure required by 12.2(1) must be made by the licensee to all parties to a real estate transaction identifying which party the licensee represents in the transaction.

a. The written disclosure is required to be made to the buyer or tenant prior to any offer, lease, or rental agreement being made or signed by the buyer or tenant, and prior to any offer, lease, or rental agreement being signed or accepted by the seller or landlord.

b. The written disclosure shall be 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 shall require that a new verbal disclosure be made which must be followed by a new written disclosure signed by all parties to the transaction as soon as practical.

12.2(4) A licensee representing a buyer or tenant shall inform the listing broker, the listing agent, or the seller or landlord, either verbally or in writing, of the agency relationship before any previewing, showing or negotiations are initiated, whichever comes first. If the property is not listed, the required disclosure shall be made to the unrepresented seller or landlord.

12.2(5) The seller or landlord may, in the listing or 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.

12.2(6) Nothing contained in this rule shall obligate any buyer or tenant or seller or landlord to pay compensation to a licensee unless the buyer or tenant or seller or landlord has entered into a written listing or brokerage agreement with the broker specifying the compensation terms and conditions, in accordance with Iowa real estate license law and commission rules.

12.2(7) The obligation of either the seller or landlord or buyer or tenant to pay compensation to a broker does not establish an agency relationship or affect any agency relationship.

12.2(8) Nothing contained in this rule shall prohibit a party from entering into a written listing or brokerage agreement with a broker which contains duties, obligations, and responsibilities that are in addition to those specified in Iowa real estate license law and commission rules.

12.2(9) A licensee may not be the agent for both the buyer or tenant and the seller or landlord without obtaining the written consent of both the buyer or tenant and the seller or landlord.

12.2(10) A licensee may work with and establish different types of agency relationships with the same client, in separate transactions. Examples of different agency relationships with the same client in separate transactions include, but are not limited to, the following:

a. A common example includes a licensee acting as a listing or seller's agent selling a property in one transaction and also working with and representing this same person in another transaction as a buyer's agent in the purchase of a different property.

b. A licensee may act as a dual agent in either of the separate transactions, or both, with the written permission of the parties to the specific transaction and if the broker or brokerage has a written company policy that includes disclosed dual agency for in-house transactions or same agent transactions.

c. Regardless of the type of agency relationship provided in each transaction, the licensee shall comply with the requirements of Iowa Code chapter 543B and this rule in establishing the relationships for each separate transaction.

12.2(11) An agency relationship disclosure is not required when the licensee is acting solely as a principal and not as an agent for another or when a written communication from the licensee is a solicitation of business.

12.2(12) 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 shall note that fact and include the date, place, time, and the names of others in attendance on a copy of the agency disclosure document and obtain other documentation establishing delivery of the disclosure and maintain the written documentation, including but not limited to copies of facsimile, restricted delivery certified mail, and other communications, in the transaction file.

12.2(13) A licensee who is offering real estate brokerage services as an auctioneer shall make the written disclosure to the buyer and obtain the acknowledgment of receipt required by law and rules, prior to the buyer's entering into a written purchase agreement for the property. For the purposes of this rule, the identification of the successful bidder shall constitute the first meaningful contact with a buyer when specific assistance is provided. After the first meaningful contact, the first practical opportunity to make the required disclosures to the buyer shall depend upon the circumstances. While it is not required, it is recommended that licensees disclose in all advertisements and flyers that they are licensed agents representing the seller and, prior to crying the auction, announce that they are licensed real estate agents representing the seller.

a. Disclosure under this rule applies only to the day of the auction.

b. If the licensee provides brokerage services prior to the auction, the disclosure shall be made either orally or in writing prior to or at the time of specific assistance being provided.

12.2(14) The licensee shall retain a copy of the disclosure form signed by the prospective buyer, seller, landlord or tenant, or the documentation and copies as required in 12.2(12) as follows:

a. If an offer is accepted, the signed or noted copy shall be retained by the broker in the closed transaction file for a period of five years from the date of the signature or note.

b. If the offer is not accepted, a signed and noted copy shall be retained with the rejected offer for a period of five years.

12.2(15) Failure of a licensee to comply with this rule is prima facie evidence of a violation of Iowa Code subsection 543B.34(4).

12.2(16) Failure of a licensee to act consistent with disclosure representations made pursuant to this rule is prima facie evidence of a violation of Iowa Code subsection 543B.34(4).

12.2(17) Nothing in this rule shall affect the validity of title to real property transferred based solely on the reason that any licensee failed to conform to the provisions of this rule.

12.2(18) A sole-proprietor single broker or firm shall not be required to offer or engage in more than one type of brokerage relationship as enumerated in rules 193E—12.3(543B) to 193E—12.5(543B).

12.2(19) 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, shall disclose 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.

193E—12.3(543B) Single agent representing a seller or landlord.

12.3(1) Duty to seller or landlord. A licensee representing a seller or landlord as an exclusive seller's agent or an exclusive landlord's agent shall have the following duties and obligations:

a. Perform the terms of the written agreement made with the seller or landlord;
b. Exercise reasonable skill and care for the seller or landlord;
c. Promote the interests of the seller or landlord with the utmost care, integrity, honesty, and loyalty, including but not limited to the following:

(1) Seeking a price and terms which are acceptable to the seller or landlord, except that the licensee shall not be obligated to seek additional offers to purchase the property while the property is subject to a contract for sale or to seek additional offers to lease the property while the property is subject to a lease or letter of intent to lease;

(2) Presenting all written offers to and from the seller or landlord in a timely manner regardless of whether the property is subject to a contract for sale or lease or a letter of intent to lease, unless it is provided for by the brokerage agreement;

(3) Disclosing to the seller or landlord all material adverse facts concerning the property and the transaction that are actually known by the licensee pursuant to Iowa Code section 543B.56;

(4) Advising the client to obtain expert advice as to material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee;

(5) Preserving the seller's or landlord's confidential information as defined in rule 193E—2.1(543B), unless disclosure is required by law or unless failure to disclose such information would constitute fraud or dishonest dealing, including but not limited to the following:

1. Information concerning the seller or the landlord that, if disclosed to the other party, could place the seller or landlord at a disadvantage when bargaining;

2. That the seller or landlord is willing to accept less than the asking price or lease price for the property;

3. What the motivating factors are for the client's selling or leasing the property;

4. That the seller or landlord will agree to sale, lease, or financing terms other than those offered;

5. The seller's or landlord's real estate needs;

6. The seller's or landlord's financial information;

(6) Accounting in a timely manner for all money and property received;

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

(8) Complying with all requirements of Iowa Code chapter 543B and all commission rules and regulations;

(9) Complying with any applicable federal, state, or local laws, rules, or ordinances, including fair housing and civil rights statutes and regulations.

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

a. The licensee owes no duty to conduct an independent inspection of the property for the benefit of the buyer or tenant and owes no duty to independently verify the accuracy or completeness of any statement made by the seller or landlord or any independent inspector, unless the licensee knows or has reason to believe the information is not accurate.

b. Nothing in this rule precludes the obligation of a buyer or tenant from the responsibility of protecting the buyer's or the tenant's own interest by means of, but not limited to, inspecting the physical condition of the property and verifying important information.

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 shall be an agent with the same obligations and responsibilities to the seller or landlord as the primary broker of the seller or landlord.

d. 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.

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.

193E—12.4(543B) Single agent representing a buyer or tenant.

12.4(1) *Duty to buyer or tenant.* A licensee representing a buyer or tenant as an exclusive buyer's or an exclusive tenant's agent shall have the following duties and obligations:

a. Perform the terms of any written agreement made with the client;
b. Exercise reasonable skill and care for the client;
c. Promote the interests of the client with the utmost good faith, loyalty, and fidelity, including but not limited to the following:

(1) Seeking a property at a price and terms which are acceptable to the buyer or tenant, except that the licensee shall not be obligated to seek other properties while the client is a party to a contract to purchase property, or to a lease or letter of intent to lease, unless it is provided for by the brokerage agreement;

(2) Presenting all written offers to and from the client in a timely manner regardless of whether the client is already a party to a contract to purchase property or is already a party to a contract or letter of intent to lease;

(3) Disclosing to the buyer or tenant material adverse facts concerning the property and the transaction that are actually known by the licensee, pursuant to Iowa Code section 543B.56;

(4) Advising the buyer or tenant to obtain expert advice on material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee;

(5) Preserving the buyer's or tenant's confidential information as defined in rule 193E—2.1(543B), unless disclosure is required by law or unless failure to disclose such information would constitute fraud or dishonest dealing, including but not limited to the following:

1. Information concerning the buyer or the tenant that, if disclosed to the other party, could place the client at a disadvantage when bargaining;

2. That the buyer or tenant is willing to pay more than the asking price or lease price for the property;

3. What the motivating factors are for the party's buying or leasing the property;

4. That the buyer or tenant will agree to sale, lease, or financing terms other than those offered;

5. The buyer's or tenant's real estate needs;

6. The buyer's or tenant's financial qualifications;

(6) Accounting in a timely manner for all money and property received;

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

(8) Complying with all requirements of Iowa Code chapter 543B and all commission rules;

(9) Complying with any applicable federal, state, or local laws, rules, and ordinances, including fair housing and civil rights statutes and regulations.

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

a. The licensee owes no duty to conduct an independent investigation of the buyer's or tenant's financial condition for the benefit of the seller or landlord and owes no duty to verify the accuracy or

completeness of any statement made by the buyer or tenant or any independent source, unless the licensee knows or has reason to believe the information is not accurate.

b. Nothing in this rule shall limit the obligation of a seller or landlord from the responsibility of protecting the seller's or landlord's own interest by means of, but not limited to, verifying information concerning or provided by the buyer or tenant.

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 shall be a single agent with the same obligations and responsibilities to the buyer or tenant as the primary broker of the buyer or tenant.

d. 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.

193E—12.5(543B) Disclosed dual agent.

12.5(1) A brokerage which has a company policy that permits disclosed dual agency for in-house transactions shall provide a disclosed dual agency consent agreement to the client or prospective client prior to engaging in any activities of a dual agent. If any seller, landlord, buyer, or tenant rejects dual agency, or refuses to sign consent to dual agency, the licensee shall not act as a dual agent. The dual agency consent agreement shall comply with Iowa law and commission rules including, but not limited to, the requirement to inform the prospective clients that they are not required to consent to dual agency representation as provided by 12.5(2).

a. A licensee may act as a dual agent only with the informed consent of all parties to the transaction. The informed consent shall be evidenced by a written agreement pursuant to Iowa law and commission rules.

b. A dual agent shall be an agent for both the seller and buyer or the landlord and tenant and shall have the duties and obligations required for a single agent representing a seller or landlord and for a single agent representing a buyer or tenant, unless otherwise provided for in this rule.

c. A dual agent shall disclose to the client all material adverse facts concerning the property that are actually known by the licensee, pursuant to Iowa Code section 543B.56.

d. A dual agent shall not disclose to one client confidential information about the other client and shall preserve a seller's or a landlord's, or a buyer's or a tenant's, confidential information as defined in rule 193E—2.1(543B), unless disclosure is required by law, or failure to disclose such information would constitute fraud or dishonest dealing, or disclosure is authorized by express instruction. A dual agent does not terminate the dual agency relationship by making the disclosures required or permitted by the dual agency consent agreement. Confidential information shall include, but not be limited to, the following:

(1) Information concerning a seller or landlord that if disclosed to the buyer or tenant could place that seller or landlord at a disadvantage when bargaining;

(2) Information concerning a buyer or tenant that if disclosed to the seller or landlord could place that buyer or tenant at a disadvantage when bargaining;

(3) That the seller or landlord is willing to accept less than the asking price or rent or lease price for the property;

(4) That the buyer or tenant is willing to pay more than the asking price or rent or lease price for the property;

(5) What the motivating factors are for client's selling, renting, or leasing the property;

(6) What the motivating factors are for the client's buying, renting, or leasing the property;

- (7) That the seller or landlord will agree to sale, rent, lease, or financing terms other than those offered;
- (8) That the buyer or tenant will agree to sale, rent, lease, or financing terms other than those offered;
- (9) The seller's or landlord's real estate needs;
- (10) The buyer's or tenant's real estate needs;
- (11) The seller's or landlord's financial information;
- (12) The buyer's or tenant's financial qualifications.

e. In any transaction, a licensee may withdraw from representing a client who has not consented to a disclosed dual agency at any time prior to the existence of the dual agency, which is prior to discussing any seller's or landlord's property with a potential buyer or tenant and prior to discussing any potential buyer or tenant with a seller or landlord, when both the seller or landlord and the buyer or tenant are represented by and are clients of the licensee.

(1) All withdrawals shall be made in writing and acknowledged by the separate signatures of the clients.

(2) Such withdrawal shall not prejudice the ability of the licensee to continue to represent the other client in the transaction or limit the licensee from representing the client in other transactions not involving a dual agency.

12.5(2) A dual agency consent agreement shall:

- a.* Fairly and accurately describe the type of representation the licensee will provide each client;
- b.* Contain a statement of the licensee's duties under Iowa Code section 543B.56, subsection 1;
- c.* Contain a statement of the licensee's duties under Iowa Code section 543B.56, subsection 2;
- d.* Inform the clients that representing more than one party to a transaction may present a conflict of interest;
- e.* Inform the clients that they are not required to consent to dual agency;
- f.* Provide additional information that the licensee determines is necessary to clarify the licensee's relationship with each client, including any changes from prior types of representation;
- g.* Describe the confidential information a dual agent will not disclose to one client about the other client; and
- h.* Include a statement that the clients understand the licensee's duties and consent to the licensee's providing brokerage services to more than one client.

12.5(3) No particular disclosure language is required. The commission recommends use of the following sample language to satisfy the required disclosure regarding conflict of interest:

Representing more than one party to a transaction can create a conflict of interest since both clients may rely upon the broker's advice and the clients' respective interests may be adverse to each other. Broker will endeavor to be impartial between seller and buyer and will not represent the interest of either the seller or buyer to the exclusion or detriment of the other.

12.5(4) Potential dual agency agreement. A brokerage which has a company policy that permits disclosed dual agency for in-house transactions and that elects to use a potential dual agency agreement shall provide the agreement to the client or prospective client prior to engaging in any activities of a dual agent. Such consent agreement shall comply with Iowa law and commission rules.

a. The potential dual agency agreement should be provided to the seller or landlord prior to entering into a listing agreement or a contract for seller or landlord brokerage services.

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.

c. If the parties to a proposed transaction or contract have agreed in writing to potential dual agency, a dual agency consent disclosure shall be presented to the buyer or tenant prior to the buyer's or tenant's signing an offer to purchase or a rental or lease agreement. The buyer or tenant may accept or reject dual agency at this point in the transaction.

d. If the parties to a proposed transaction or contract have agreed in writing to potential dual agency, a dual agency consent disclosure shall be presented to the seller or landlord prior to the seller's

or landlord's signing or accepting an offer to purchase or a rental or lease agreement. The seller or landlord may accept or reject dual agency at this point in the transaction.

e. If the parties to a proposed transaction or contract have agreed in writing to potential dual agency, the required subsequent dual agency consent disclosure shall be property-specific and comply with Iowa law and commission rules.

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 may not 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 required to be disclosed by law.

12.6(1) The designated broker may want to include in the written company policy some or all of the appointed agents within the brokerage and may want to include the procedure by which the appointment of the agent or agents is made.

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 represent buyers or tenants as their agents in any transactions dealing with the subject property.

12.6(3) 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 shall not act as an appointed agent for that other party.

193E—12.7(543B) Appointed agent procedures and disclosure.

12.7(1) Prior to entering into a listing or brokerage agreement, a real estate brokerage shall notify a client in writing of the real estate brokerage's appointed agent policy and those affiliated licensees within the real estate brokerage that will be acting as appointed agents of that client to the exclusion of all other affiliated licensees within the real estate brokerage. The appointed agent disclosure shall include, at a minimum, the following provisions:

- a.* The name of the appointed agent(s);
- b.* A statement that the appointed agent will be representing the client as the client's agent and will owe the client duties as set forth in Iowa Code section 543B.56, subsections 1 and 2;
- c.* A statement that the brokerage may be representing both the seller and the buyer in connection with the sale or purchase of real estate;
- d.* A statement that other affiliated licensees may be appointed during the term of the brokerage agreement should the appointed agent not be able to fulfill the terms of the brokerage agreement or as by agreement between the designated broker and the client. An appointment of another affiliated licensee or an additional affiliated licensee does not relieve the first appointed agent of any of the duties owed to the client. At any time of the appointment of the new or additional agents, the designated broker must comply with the provisions of this rule; and
- e.* A provision for the client to consent or not consent in writing to the appointment.

12.7(2) Implementation of the appointed agent within a brokerage relationship. Any broker may elect to offer the appointed agent relationship. The broker shall not implement the use of the relationship until such time as the broker has fully complied with all Iowa laws and commission rules.

a. The broker shall not, without the written consent of the clients, appoint an affiliated licensee to act as an appointed agent in any transaction involving a written exclusive single agent or dual agent brokerage agreement that was in effect prior to the broker's implementing the appointed agent relationship.

b. If the client of an appointed agent wants to consider a property on which the broker has a prior existing exclusive single agent or dual agent brokerage agreement, the broker shall not allow the use of the appointed agent without first obtaining the written consent of that particular seller or landlord to the appointed agent relationship.

c. If the written consent of the client to allow the appointed agency relationship is not given or cannot be obtained, the broker shall refer the client of the appointed agent to another broker for representation at least for the purpose of considering such property.

12.7(3) A designated broker shall not be considered to be a dual agent solely because the designated broker makes an appointment under this rule, except that any licensee who, with prior written consent of all parties, personally represents both the seller and buyer or both the landlord and tenant in a transaction shall be a dual agent and shall be required to comply with the rules governing dual agents.

12.7(4) Appointed agent and designated broker responsibilities.

a. A designated broker appointing an affiliated licensee(s) to act as an agent of a client shall take ordinary and necessary care to protect confidential information disclosed by the client to the appointed agent.

b. An appointed agent may disclose to the brokerage's designated broker, or a designee specified by the designated broker, confidential information of a client for the purpose of seeking advice or assistance for the benefit of the client in regard to a possible transaction, or to comply with the broker's supervisory duties. Confidential information shall be treated as such by the designated broker or other specified representative of the broker and shall not be disclosed unless otherwise required by Iowa law and related commission rules or requested or permitted in writing by the client who originally disclosed the confidential information.

c. If a designated broker elects to use the appointed agent within a firm authority set forth in Iowa Code section 543B.59, and when the affiliated licensee appointed also acts in a supervisory capacity under the designated broker, such as branch managers, sales managers and the like, these appointed licensees may be treated in the same manner as the designated broker for purposes of determining dual agency under Iowa Code section 543B.59, subsection 2, only if the designated broker authorizes and provides for such supervisory positions in the written company policy.

(1) A designated broker may elect to authorize and appoint an affiliated licensee in a supervisory capacity to supervise and assist licensees appointed to exclusively represent a seller or landlord in a transaction.

(2) A designated broker may elect to authorize and appoint an affiliated licensee in a supervisory capacity to supervise and assist licensees appointed to exclusively represent a buyer or tenant in a transaction.

(3) A licensee in a supervisory capacity that is authorized and appointed to supervise and assist licensees appointed to represent a seller or landlord, or buyer or tenant, exclusively, shall have the same duties, obligations, and responsibilities as the designated broker.

(4) The use of an authorized appointed agent shall not relieve the designated broker of duties, obligations, and responsibilities required by law or rules.

12.7(5) Licensee's duty to designated broker or designee. A licensee shall keep the brokerage's designated broker or that broker's designee fully informed of all activities conducted on behalf of the brokerage and shall notify the designated broker or that broker's designee of any other activities that might impact on the responsibility of the designated broker or that broker's designee.

These rules are intended to implement Iowa Code chapters 17A, 272C and 543B.

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CHAPTER 13
TRUST ACCOUNTS AND CLOSINGS

[Prior to 9/4/02, see 193E—Ch 1]

193E—13.1(543B) Trust account. All earnest payments, all rents collected, property management funds, and other trust funds received by the broker in such capacity or broker associate or salesperson on behalf of the broker's client shall be deposited in a trust account maintained by the broker in an identified trust account, with the word "trust" in the name of the account, in a federally insured bank, savings and loan association, savings bank, or credit union located in Iowa and, for the purposes of this rule, may be referred to as the "depository."

13.1(1) All money belonging to others received by the broker, broker associate or salesperson on the sale, rental, purchase, or exchange of real property located in Iowa are trust funds and must be deposited in a trust account. This shall include, but not be limited to, receipts from property management contracts; rental or lease contracts; advance fee contracts; escrow contracts; collection contracts; earnest money contracts; or money received by a broker for future investment or other purpose, except a nonrefundable retainer need not be placed in an escrow account if specifically provided for in the written agreement between the broker and the broker's principal.

a. All trust funds must be deposited into the broker's trust account by no later than five banking days after the date indicated on the document that the last signature of acceptance of the offer to purchase, rent, lease, exchange, or option is obtained.

b. Money belonging to others shall not be invested in any type of fixed-term maturity account, security or certificate without the written consent of the party or parties to whom the money belongs.

c. A broker shall not commingle personal funds in a trust account; provided, however, that not more than \$500 of the broker's personal funds may be maintained in each separate account if (1) such personal funds are separately accounted for and (2) such personal funds are intended to be used by the broker to pay for expenses directly related to maintaining the account.

The broker shall ensure that personal funds are deposited to cover bank service charges as specified in Iowa Code section 543B.46, and that at no time are trust moneys used to cover any charges. Upon notification that the broker's personal funds are not sufficient to cover service charges initiated by the bank that are above the normal maintenance charges, the broker shall deposit personal funds to correct the deficiency within 15 calendar days of the closing date of that bank statement.

d. Money held in the trust account, which becomes due and payable to the broker, shall be promptly withdrawn by the broker.

e. The broker shall not use the trust account as a business operating account or for personal use. Commissions, salaries, related items and normal business expenses shall not be disbursed directly from the trust account.

13.1(2) Unless there is a written agreement between all parties to the transaction to the contrary, or the provisions of paragraph 13.1(2) "g" apply, all interest earned on the trust account shall be transferred on a calendar quarter basis to the state. The amount to be remitted to the state will be the amount of interest earned less any service charges directly attributable to the requirement of maintaining an interest-bearing account and of remitting the interest to the state. The broker may have the depository remit the interest directly or the broker may remit the interest but, in either case, it shall be the responsibility of the broker to see that the interest is remitted.

a. If the interest is remitted by the broker, the broker should use the commission-approved Real Estate Interest Remittance Form and include a copy of the applicable bank statement(s) showing the interest paid and the service charges attributable to maintaining the account.

b. If the interest is remitted by the broker, the broker shall mail the interest remittance check and required documentation to:

The State of Iowa
c/o Bankers Trust Company
P.O. Box 4686
Des Moines, Iowa 50306

c. The depository should use the name “Iowa Department of Economic Development” and the federal tax information number (TIN) 01-0606429 on the 1099 reporting form when reporting the interest to the IRS.

d. The depository should send the 1099 reporting form to:

Iowa Department of Economic Development
200 East Grand Avenue
Des Moines, Iowa 50309

e. If the property management or rental account is interest-bearing, the interest shall be transferred on a calendar quarter basis to the state unless there is a written agreement paying the interest to the property owner.

f. In no event shall the broker be paid interest earned on moneys held in trust for others by the broker.

g. A broker shall enter into a written agreement to pay interest to a buyer or seller in a transaction, or to a third party if requested by the parties to the contract and agreed to by the broker, if the client’s trust funds can earn net interest. In determining whether a client can earn net interest on funds placed in trust, the broker shall take into consideration all relevant factors including the following:

(1) The amount of interest that the funds would earn during the period in which they are reasonably expected to be deposited;

(2) The cost of establishing and administering an individual interest-bearing trust account in which the interest would be transmitted to the client, including any needed tax forms; and

(3) The capability of the financial institution to calculate and pay interest to individual clients through subaccounting or otherwise.

13.1(3) With disclosure to and the written agreement of all parties, a trust account may bear interest to be disbursed to (1) the buyer or seller involved in a real estate purchase, sale or exchange transaction, or (2) the property owner, if the property management or rental contract contains this specific provision, or (3) as otherwise specifically allowed or provided in Iowa Code sections 562A.12(2) and 562B.13(2), or (4) a third party if requested by the parties to the contract and agreed to by the broker. Disbursements of interest on trust funds are subject to all provisions of law that require a broker to safeguard and account for the handling of funds of others.

13.1(4) Receipts from property management and rental account transactions may be deposited in a trust account separate from real estate transaction funds. If separately maintained, this account shall not be required to be an interest-bearing account.

a. The broker shall provide to the broker’s client a complete accounting of all moneys received and disbursed from the trust account(s) not less often than annually.

b. A broker may only utilize a separate property management or rents trust account for those moneys received by a broker pursuant to a written property management or rental agreement.

13.1(5) A broker shall be required to open and maintain one or more trust accounts if the broker receives or expects to receive trust funds. For each separate trust account opened, the broker shall file with the commission a written Consent to Examine and Audit Trust Account form which irrevocably authorizes the commission to examine and audit the trust account. The form of consent shall be prescribed by and available from the commission, and shall include the account names and number, and the name and address of the depository.

a. If the broker does not expect to receive trust funds, the broker shall file an affidavit with the commission on a form prescribed by and available from the commission.

b. If trust funds are received by the broker after filing an affidavit, the broker must immediately open a trust account and file the appropriate Consent to Examine and Audit Trust Account form with the commission.

c. As provided by Iowa Code section 543B.46(3), a consent to examine is not required for a separate farm business operating account in the name of the owner or owners and used by either the farm owner or farm manager or agent to conduct business as a part of a written farm management agreement.

d. As provided by Iowa Code section 543B.46(3), a consent to examine is not required for a separate property management account in the name of the owner or owners and used by either the

property owner or property manager or agent to conduct property management as a part of a written property management agreement.

13.1(6) Each broker required to maintain a trust account shall maintain at all times a record of each account, as required by these rules, in the place of business, consisting of at least the following:

a. A record called a journal which records in chronological order all receipts and disbursements of moneys in the trust account.

(1) For receipts, the journal for each trust account must include the date, name of depositor, the check number and the amount deposited, and the name of principal or identify the property.

(2) For disbursements, the journal for each trust account must include the date, name of payee, name of principal or identify the property, the check number and the amount disbursed.

(3) The journal must provide a means for monthly reconciliation on a written worksheet of the general ledger balance with the bank balance and with the individual ledger accounts to ensure agreement.

b. Real estate sales transactions shall additionally require an individual ledger account identified by the property or the principal, which records all receipts and disbursements of the transaction and clearly separates the transaction from all others. The individual ledger account shall include the date, check number, amount, name of payee or depositor or explanation of activity with a running balance.

c. Property management trust account records shall additionally include an individual ledger account for each tenant, identifying the tenant's rental unit and security deposit and including all receipts and disbursements together with check number and date. The journal for each account shall be maintained as an owner's ledger account for all properties owned by each owner showing receipts and disbursements applicable to each property managed.

(1) All disbursements must be documented by bids, contracts, invoices or other appropriate written documentation.

(2) The running balance may be determined at the time of monthly reconciliation.

d. Trust account supporting documents shall include, but not be limited to, the following:

(1) Bank statements;

(2) Canceled checks;

(3) Copies of contracts, listing, sales, rental and leasing;

(4) Closing statements;

(5) Pertinent correspondence; and

(6) Any additional items necessary to verify or explain an entry.

13.1(7) Funds, including interest on trust funds, shall only be disbursed from the trust account as provided in Iowa Code section 543B.46(1) and by the terms and conditions of the contract or escrow agreement. No funds shall be disbursed from the trust account prior to the closing, or other than as provided by the terms of the escrow agreement, without the informed written consent of all the parties. In the event of a dispute over the return or forfeiture of an earnest money deposit or the disbursement of an escrow deposit held by a broker, the broker shall continue to hold the deposit in the trust account until one of the following conditions is met:

a. The broker is in receipt of a written release from all parties to the transaction consenting to the disposition of the deposit or escrow funds; or

b. The broker is in receipt of a final judgment of the court directing the disposition of the deposit or escrow funds; or

c. There is a final decision of a binding alternative dispute resolution process, or mediation directing the disposition of the deposit or escrow funds; or

d. A civil court action is filed by one or more of the parties to determine the disposition of the deposit or escrow funds, at which time the broker may seek court authorization to pay the deposit or escrow funds into court.

13.1(8) No funds shall be disbursed from the trust account prior to the closing without the informed written consent of all the parties to the transaction as provided in 13.1(7), except in accordance with this rule. Nothing in this rule requires a broker to remove money from the broker's trust account when the disposition of such money is disputed by the parties to the transaction. The commission will not take

disciplinary action against a broker who in good faith disburses trust account moneys pursuant to this rule.

a. In the absence of a pending civil court action or written agreement, it shall not be grounds for disciplinary action when, upon passage of 30 days from the date of the dispute, a broker disburses the earnest money deposit to a buyer, renter, or lessee in a transaction based upon a good faith decision that a contingency has not been met, but disbursement shall be made only after the broker has given 30 days' written notice by certified mail to all parties concerned at their last-known addresses, setting forth the broker's proposed action and the grounds for the decision.

b. In the absence of a pending civil action or written agreement, it shall not be grounds for disciplinary action when, upon passage of six months from the date of the dispute, a broker disburses the earnest money deposit to a seller or landlord in a transaction based upon a good faith decision that the buyer, renter, or lessee has failed to perform as agreed, but disbursement shall be made only after the broker has given 30 days' written notice by certified mail to all parties concerned at their last-known addresses, setting forth the broker's proposed action and grounds for the decision.

c. The dispute must be legitimate. If a buyer or seller, or a landlord or lessee, or a renter demands the return of the earnest money deposit, the broker shall consult with the other party who may agree or disagree with the return.

13.1(9) Under no circumstances is the broker entitled to withhold any portion of the earnest money when a transaction fails to consummate even if a commission is earned. The earnest money must be disposed of as provided in 13.1(7), 13.1(8), or 13.1(10), and the broker shall pursue any claim for commission or compensation against the broker's client.

13.1(10) Interpleader. Anytime the broker in good faith believes that the parties disputing the return of the deposit will not agree on the disposition of the deposit or file a civil court action to determine the disposition of the deposit, then the broker may elect to file an interpleader action with the appropriate court pursuant to Iowa Rules of Civil Procedure and pay the deposit into court. The broker may, in filing such an interpleader court action:

a. Attempt to claim a part of the deposit pursuant to the listing contract with the seller, if the seller is successful in the suit.

b. Disclaim any part of the deposit and request the court to restrain the buyer and the seller from naming the broker in the civil suit and order them to litigate their claims to the deposit.

13.1(11) A trust account may bear interest to be disbursed to the buyers or sellers or to a third party if requested by the parties to the contract and agreed to by the broker with the written approval of all parties to the contract or to the owner if the trust account is for a property management account and the management contract so specifies, or as otherwise specifically allowed or provided in Iowa Code sections 562A.12(2) and 562B.13(2). The account shall be a separate account from the account(s) which is to accrue interest to the state. The broker shall not benefit from interest received on funds of others in the broker's possession. Interest shall be disbursed to the owner or owners of the funds at the time of settlement of the transaction or as agreed to in the management contract and shall be properly accounted for on closing statements. A broker shall not disburse interest on trust funds except as provided in 13.1(3) and 13.1(7). Service charges for the account are a business expense of the broker and shall not be deducted from the proceeds.

13.1(12) Property management account funds may be withdrawn at any time for the purpose of returning the funds to the payee in accordance with the terms of the contract or receipt.

13.1(13) Property management funds may be withdrawn when and if the broker reasonably believes, from evidence available, that the tenant has obtained a rental or lease through information supplied by or on behalf of the broker.

13.1(14) Trust funds that are not traceable to any individual for disbursement from the trust account are unclaimed property. Unclaimed trust funds must be entered on a separate individual ledger for accounting purposes. In accordance with Iowa Code chapter 556, after three years, unclaimed trust funds shall be paid to:

Treasurer
State of Iowa

Unclaimed Property Division
Hoover State Office Building
Des Moines, Iowa 50319

193E—13.2(543B) Closing transactions. It shall be mandatory for every broker to deliver to the seller in every real estate transaction, at the time the transaction is consummated, a complete detailed statement, showing all of the receipts and disbursements handled by the broker. Also, the broker shall at the same time deliver to the buyer a complete statement showing all moneys received in the transaction from the buyer and how and for what the same were disbursed.

13.2(1) In the event all funds being held by the broker for a transaction cannot be disbursed at the time of closing, the broker shall obtain an escrow agreement signed by both parties to the transaction which shall direct the broker regarding the future disbursement of the funds.

13.2(2) The broker shall retain all trust account records and a complete file, which shall include but not be limited to the records required by 13.5(543B), on each transaction for a period of at least five years after the date of the closing. Records required by this rule may be retained as an electronic record as provided by 13.5(543B).

13.2(3) The listing broker shall be responsible for the closing even though the closing may be completed by another licensee.

13.2(4) If the closing transaction is handled through an unlicensed escrow agent and the escrow agent renders a closing statement, the listing broker shall ensure that funds which the broker has received or paid as part of the transaction are accounted for properly.

13.2(5) In the case of a cooperative sale between brokers, the listing broker may elect to close the transaction or, by prior agreement, authorize the selling broker to close.

a. If the listing broker so elects, the selling broker shall have the buyer make the earnest money check or money order payable to the listing broker and shall immediately deliver the earnest money check or money order along with the offer to purchase to the listing broker or listing agent.

b. Unless by prior agreement the listing broker has authorized the selling broker to close, the offer to purchase shall designate that the earnest money is to be held in trust by the listing broker.

c. Unless by prior agreement the listing broker has authorized the selling broker to close, when cash is accepted as earnest money by the selling agent, the selling agent must deposit the money in the selling broker's trust account in accordance with commission rules, and then immediately transfer the earnest money deposit to the listing broker by issuing a check drawn on the selling broker's trust account.

13.2(6) Any means other than cash or an immediately cashable check shall not be accepted as earnest money unless that fact is communicated to the seller prior to the acceptance of the offer to purchase, and is stated in the offer to purchase.

13.2(7) Brokers acting as agents for the buyer in a specific real estate transaction shall have the same requirements for retention of copies as stated in this rule, except that a buyer's agent who is not a party to the listing contract is not required to retain a copy of the listing contract or the seller's settlement statement.

13.2(8) Iowa Ct. R. 37.5, limited real estate practice. All Iowa real estate licensees should be aware that Iowa Ct. R. 37.5 authorizes nonlawyers to select, prepare, and complete certain legal documents incident to residential real estate transactions of four units or less. The preparation of documents beyond that authorized by this court rule may constitute the unauthorized practice of law.

a. Except to the extent authorized by the court rule, the selection, preparation, and completion of legal documents in connection with real estate transactions by nonlawyers constitutes the unauthorized practice of law unless the nonlawyer is acting on the person's own behalf as a buyer or seller.

b. Upon written request of a buyer or seller, a nonlawyer may select, prepare, and complete form documents for use incident to a residential real estate transaction of four units or less. Such documents shall be limited to:

(1) Offers to purchase or purchase agreements, provided the parties are given written notice that these are binding legal documents and competent legal advice should be sought before signing;

(2) Groundwater hazard statements; and

(3) Declaration of value forms.

c. Nonlawyers may not charge for preparation of the legal documents authorized by the court rule.

Nonlawyers shall not select, prepare or complete:

(1) Deeds;

(2) Real estate installment sales contracts;

(3) Affidavits of identity or nonidentity;

(4) Affidavits of payment of spousal or child support; or

(5) Any other documents necessary to correct title problems or deficiencies.

193E—13.3(543B) Salesperson shall not handle closing. A salesperson shall not handle the closing of any real estate transaction except under the direct supervision or with the consent of the employing broker.

193E—13.4(543B) Consent to return earnest money not required. When an offer to purchase is withdrawn or the acceptance is revoked without liability pursuant to Iowa Code chapter 558A, any earnest money deposit shall be promptly returned to the buyer without delay. The seller's consent and agreement to release the funds is not required. A copy of the written revocation or withdrawal shall be retained with the trust account supporting documents.

193E—13.5(543B) File record keeping. Every broker shall retain for a period of at least five years true copies of all business books; accounts, including voided checks; records; contracts; closing statements; disclosures; signed documents; the listing; any offers to purchase; and all correspondence relating to each real estate transaction that the broker has handled and each property managed. The records shall be made available for reproduction and inspection by the commission, staff, and commission-authorized representatives at all times during usual business hours at the broker's regular place of business. If the brokerage closes, the records shall be made available for reproduction and inspection by the commission, staff, and commission-authorized representatives upon request.

13.5(1) Contracts and other documents that have been changed or altered to the point where the language is unreadable and faxed contracts and documents in which the language is unreadable are not acceptable records and must be redrafted and signed by the parties.

13.5(2) Copies of unreadable documents are not acceptable as true copies of the originals regardless of the medium.

13.5(3) Electronic records. The files, records, and other documents required by this chapter may be stored in electronic format for convenience and efficiency in a system for electronic record storage, analysis, and retrieval.

a. A record required by this chapter may be retained as an electronic record only if the record storage medium can be easily accessed and the records can be readily retrieved and transferred to a legible printed form upon request.

b. The scanning or electronic generation of a record must be monitored to ensure that the copy is clear, legible and true before the original is shredded.

c. Once the original record is transferred to the appropriate electronic storage medium consistent with this rule, the commission will no longer require the retention of the record in its original medium. For the purposes of this chapter, electronic records shall be considered the same as originals.

193E—13.6(543B) Licensee acting as a principal. When a licensee is acting in the capacity of a real estate broker, broker associate or salesperson and is also a principal in the sale, lease, rental or exchange of property owned by the licensee, all payments, rent, or security deposits received from the lessee, renter or buyer must be deposited into the broker's trust account. The use of the broker's trust account is not required if all of the following exist:

1. The sale, rental, or exchange is strictly, clearly and completely a "by owner" transaction and there is not a listing or brokerage agreement;

2. No commission or other compensation is paid to or received by the licensee; and

3. The licensee does not function throughout the transaction in any capacity requiring a real estate license.

These rules are intended to implement Iowa Code chapters 17A, 272C and 543B.

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CHAPTER 14
SELLER PROPERTY CONDITION DISCLOSURE

[Prior to 9/4/02, see 193E—Ch 1]

193E—14.1(543B) Property condition disclosure requirement. The requirements of this chapter shall apply to transfers of real estate subject to Iowa Code chapter 558A. For purposes of this chapter, “transfer” means the transfer or conveyance of real estate by sale, exchange, real estate contract, or any other method by which real estate and improvements are purchased, including rental or lease agreements which contain any option to purchase, if the property includes at least one but no more than four dwelling units unless the transfer is exempted by Iowa Code section 558A.1(4).

14.1(1) Additional disclosure. Nothing in this rule is intended to prevent any additional disclosure or to relieve the parties or agents in the transaction from making any disclosure otherwise required by law or contract.

14.1(2) Licensee responsibilities to seller. At the time a licensee obtains a listing, the listing licensee shall obtain a completed disclosure signed and dated by each seller represented by the licensee.

a. A licensee representing a seller shall deliver the executed statement to a potential buyer, a potential buyer’s agent, or any other third party who may be representing a potential buyer, prior to the seller’s making a written offer to sell or the seller’s accepting a written offer to buy.

b. The licensee representing a seller shall attempt to obtain the buyer’s signature and date of signature on the statement and shall provide the seller and the buyer with fully executed copies of the disclosure and maintain a copy of the written acknowledgment in the transaction file. If the licensee is unable to obtain the buyer’s signature, the licensee shall obtain other documentation establishing delivery of the disclosure and maintain the written documentation in the transaction file.

c. If the transaction closes, the listing broker shall maintain the completed disclosure statement for a minimum of five years.

d. The executed disclosure statement shall be delivered to the buyer(s) by either personal delivery or by certified or registered mail. If there is more than one buyer, any one buyer may accept delivery of the executed statement.

14.1(3) Licensee responsibilities to buyer. A licensee representing a buyer in a transfer shall notify the buyer of the seller’s obligation to deliver the property disclosure statement.

a. If the disclosure statement is not delivered when required, the licensee shall notify the buyer that the buyer may revoke or withdraw the offer.

b. If a buyer elects to revoke or withdraw the offer, the licensee shall obtain a written revocation or withdrawal from the buyer and shall deliver the revocation or withdrawal to the seller within three days following personal delivery or five days following delivery of the disclosure by mail to the buyer.

c. Following revocation or withdrawal of the offer, any earnest money deposit shall be promptly returned without liability pursuant to Iowa Code chapter 558A and rule 193E—13.4(543B).

14.1(4) Inclusion of written reports. A written report or opinion prepared by a person qualified to render the report or opinion may be included in a disclosure statement. A report may be prepared by, but not limited to, the following persons provided that the content of the report or opinion is within the specified area of expertise of the provider: a land surveyor licensed pursuant to Iowa Code chapter 542B; a geologist; a structural pest control operator licensed pursuant to Iowa Code section 206.6; or a qualified building contractor.

a. The seller must identify the required disclosure items which are to be satisfied by the report.

b. If the report is prepared for the specific purpose of satisfying the disclosure requirement, the preparer of the report shall specifically identify the items of the disclosure which the report is intended to satisfy.

c. A licensee representing a seller shall provide the seller with information on the proper use of reports if reports are used as part of the disclosure statement.

14.1(5) Amended disclosure statement. A licensee’s obligations with respect to any amended disclosure statement are the same as the licensee’s obligations with respect to the original disclosure

statement. A disclosure statement must be amended if information disclosed is or becomes inaccurate or misleading or is supplemented unless one of the following exceptions applies:

a. The information disclosed in conformance with Iowa Code chapter 558A is subsequently rendered inaccurate as a result of an act, occurrence, or agreement subsequent to the delivery of the disclosure statement.

b. The information disclosed is based on information of a public agency, including the state, a political subdivision of the state, or the United States.

14.1(6) *Minimum disclosure statement contents for all transfers.* All property disclosure statements, whether or not a licensee assists in the transaction, shall contain at a minimum the information required by the following sample statement. No particular language is required in the disclosure statement provided that the required disclosure items are included and the disclosure complies with Iowa Code chapter 558A. To assist real estate licensees and the public, the commission recommends use of the following sample language:

RESIDENTIAL PROPERTY SELLER DISCLOSURE STATEMENT

Property address: _____

PURPOSE:

Use this statement to disclose information as required by Iowa Code chapter 558A. This law requires certain sellers of residential property that includes at least one and no more than four dwelling units to disclose information about the property to be sold. The following disclosures are made by the seller(s) and not by any agent acting on behalf of the seller(s).

INSTRUCTIONS TO SELLER(S):

1. Seller(s) must complete this statement. Respond to all questions, or attach reports allowed by Iowa Code section 558A.4(2);
2. Disclose all known conditions materially affecting this property;
3. If an item does not apply to this property, indicate that it is not applicable (**N/A**);
4. Please provide information in good faith and make a reasonable effort to ascertain the required information. If the required information is **unknown** or is **unavailable** following a reasonable effort, use an **approximation** of the information, or indicate that the information is **unknown (UNK)**. All **approximations** must be identified as **approximations (AP)**;

5. Additional pages may be attached as needed;
6. Keep a copy of this statement with your other important papers.
1. Basement/Foundation: Any known water or other problems? Yes No
 2. Roof: Any known problems? Yes No
 Any known repairs? Yes No
 If yes, date of repairs/replacement: ____/____/____
3. Well and Pump: Any known problems? Yes No
 Any known repairs? Yes No
 If yes, date of repairs/replacement: ____/____/____
 Any known water tests? Yes No
 If yes, date of last report: ____/____/____
 and results: _____
4. Septic Tanks/Drain Fields: Any known problems? Yes No
 Location of tank: _____
 Date tank last cleaned: ____/____/____
5. Sewer System: Any known problems? Yes No
 Any known repairs? Yes No
 If yes, date of repairs/replacement: ____/____/____
6. Heating System(s): Any known problems? Yes No
 Any known repairs? Yes No
 If yes, date of repairs/replacement: ____/____/____
7. Central Cooling System(s): Any known problems? Yes No
 Any known repairs? Yes No
 If yes, date of repairs/replacement: ____/____/____
8. Plumbing System(s): Any known problems? Yes No
 Any known repairs? Yes No
 If yes, date of repairs/replacement: ____/____/____
9. Electrical System(s): Any known problems? Yes No
 Any known repairs? Yes No
 If yes, date of repairs/replacement: ____/____/____
10. Pest Infestation (e.g., termites, carpenter ants): Any known problems? Yes No
 If yes, date(s) of treatment: ____/____/____
 Any known structural damage? Yes No
 If yes, date(s) of repairs/replacement: ____/____/____
11. Asbestos: Any known to be present in the structure? Yes No
 If yes, explain: _____
12. Radon: Any known tests for the presence of radon gas? Yes No
 If yes, date of last report: ____/____/____
 and results: _____
13. Lead-Based Paint: Any known to be present in the structure? Yes No
14. Flood Plain: Do you know if the property is located in a flood plain? Yes No

If yes, what is the flood plain designation? _____

15. Zoning: Do you know the zoning classification of the property? Yes [] No []

If yes, what is the zoning classification? _____

16. Covenants: Is the property subject to restrictive covenants? Yes [] No []

If yes, attach a copy or state where a true, current copy of the covenants can be obtained: _____

17. Shared or Co-Owned Features: Any features of the property known to be shared in common with adjoining landowners, such as walls, fences, roads, and driveways whose use or maintenance responsibility may have an effect on the property? Yes [] No []

Any known "common areas" such as pools, tennis courts, walkways, or other areas co-owned with others, or a Homeowner's Association which has any authority over the property? Yes [] No []

18. Physical Problems: Any known settling, flooding, drainage or grading problems? Yes [] No []

19. Structural Damage: Any known structural damage? Yes [] No []

20. Is the property located in a real estate improvement district? Yes [] No []

If yes, indicate the amount of any special assessment against the property: \$_____

You **MUST** explain any "YES" response(s) above. Use the back of this statement or additional sheets as necessary: _____

SELLER(S) DISCLOSURE:

Seller(s) discloses the information regarding this property based on information known or reasonably available to the Seller(s).

The Seller(s) has owned the property since ____/____/____. The Seller(s) certifies that as of the date signed this information is true and accurate to the best of my/our knowledge.

Seller_____ Seller_____

Date ____/____/____ Date ____/____/____

BUYER(S) ACKNOWLEDGMENT:

Buyer(s) acknowledges receipt of a copy of this Real Estate Disclosure Statement. This statement is not intended to be a warranty or to substitute for any inspection the buyer(s) may wish to obtain.

Buyer_____ Buyer_____

Date ____/____/____ Date ____/____/____

This rule is intended to implement Iowa Code chapters 17A, 272C, 543B, and 558A.

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CHAPTER 15
PROPERTY MANAGEMENT

[Prior to 9/4/02, see 193E—Ch 1]

193E—15.1(543B) Property management. A licensee shall not rent or lease real estate, offer to rent or lease real estate, negotiate or offer or agree to negotiate the rental or leasing of real estate, list or offer to list real estate for the leasing or rental of real estate, assist or direct in the negotiation of any transaction calculated or intended to result in the leasing or rental of real estate or show property to prospective renters or lessees of real estate unless the licensee's broker holds a current written property management agreement or other written authorization signed by the owner of the real estate or the owner's authorized agent.

15.1(1) Every property management agreement or other written authorization between a broker and an owner of real estate shall include, but not be limited to, the following:

- a.* Proper identification of the property to be managed.
- b.* All terms and conditions under which the property is to be managed and the powers and authority given to the broker by the owner.
- c.* Terms and conditions under which the broker will remit property income to the owner and when the broker will provide periodic written statements of property income and expenses to the owner, which shall be done no less than annually.
- d.* Which payments of property-related expenses are to be made by the broker to third parties.
- e.* Amount of fee or commission to be paid to the broker and when it will be paid.
- f.* Amount of security deposits and prepaid rents to be held by the broker or the owner.
- g.* Effective date of the agreement.
- h.* Terms and conditions for termination of the property management agreement by the broker or the owner of the property.
- i.* Signatures of the broker and owner or the owner's authorized agent.

15.1(2) The licensee shall give the owner or the owner's authorized agent a legible copy of every written property management agreement or written authorization at the time the signature of the owner is obtained, and the licensee's broker shall retain a copy.

15.1(3) A licensee who is managing the leasing or rental of real estate may act as an agent in the sale or exchange of that real estate only if the property management agreement clearly grants the specific authorization and contains all of the required elements for a listing as set forth in rule 193E—11.1(543B) or if a separate listing agreement is secured.

15.1(4) The broker shall deposit all funds received on behalf of the owner, by no later than five banking days after receipt of the funds, into a trust account maintained by the broker, under the broker's control and in compliance with Iowa Code section 543B.46 and rule 193E—13.1(543B).

15.1(5) If the property management agreement is terminated or transferred for any reason, the property manager:

- a.* Shall terminate the management activities of the property as provided in the agreement and except as otherwise provided by the agreement;
- b.* Shall notify the owner and any tenants of the property of the termination;
- c.* Shall provide the owner, not later than 30 days after the effective date of the termination, with any unobligated funds due the owner under the agreement and not later than 60 days after the effective date of the termination, provide the owner with a final accounting of the owner's ledger account, the amount of any obligated funds held in the property manager's client trust account under the agreement, a statement that explains why obligated funds are being held by the property manager and a statement of when and to whom the obligated funds will be disbursed by the property manager;
- d.* May disburse any unobligated funds only to the owner or, with the proper written authorization of the owner, to another property manager designated in writing by the owner;
- e.* Shall immediately notify each tenant that the conditionally refundable deposit will be transferred to the owner or to a new property manager and, at the same time, provide the name and address of the owner or the new property manager to whom these deposits will be transferred.

15.1(6) If any of the unobligated funds held by the property manager under the terminated agreement represent tenants' conditionally refundable deposits received from current tenants, the property manager:

a. May not expend any tenant's conditionally refundable deposits for payment of any expenses or fees not otherwise allowed by the tenant's rental or lease agreements, and

b. If any tenant terminates tenancy at the same time as or prior to the termination of the management of the rented or leased property, the licensee shall complete any final accounting, inspection or other procedure required by the tenant's rental or lease agreement, by the Uniform Residential Landlord and Tenant Law, Mobile Home Parks Residential Landlord and Tenant Law, or by the property management agreement, unless the owner directs otherwise in writing.

15.1(7) Financial dealings under a property management agreement shall be conducted subject to the following:

a. A check shall not be issued or presented for payment prior to sufficient funds being in the owner's account to cover the check.

b. Transfers of funds between two or more accounts maintained for the same owner may be made if proper entries are made on the ledgers of the accounts affected and the broker maintains the specific written authorization of the owner.

Transfers of funds between an individual owner's accounts must be done by writing billings and receipts debiting and crediting the appropriate accounts. Transfers may not be done by ledger entries alone.

c. The broker shall not withdraw, pay or transfer money from the owner's account in excess of the remaining credit balance at the time of withdrawal, payment or transfer.

d. Management fees must be withdrawn from the owner's account at least once a month unless the agreement provides otherwise. The fees shall be identified by property name or account number for which the fees were earned and withdrawn by the broker and deposited into the broker's business operating account. Fees may not be paid directly from the owner's trust account to the broker.

e. Conditionally refundable deposits shall be placed in a trust account until refund is made or until all or a portion of the deposit accrues to the owner under the tenant's agreement.

If refundable deposits are not maintained in a separate trust account, the running balance of the account shall not, at any time, go below the total of the refundable deposits being held in the account.

f. The total of balances of the individual property management accounts of the broker must equal the balance shown on the journal, the account ledgers, and the reconciled bank balance of the broker.

All accounts and records must be in compliance with Iowa Code section 543B.46 and rule 193E—13.1(543B).

g. Except as otherwise specifically allowed or provided in Iowa Code sections 562A.12(2) and 562B.13(2), if refundable deposits and funds are received from others pursuant to a property management agreement, deposited in an interest-bearing trust account, and there is not a separate written agreement to pay the interest earned to the owner or tenant, the interest shall be paid to the state pursuant to Iowa Code section 543B.46. The property manager shall not receive or benefit from the interest.

The written approval agreement shall be signed by each party having an interest in the funds, fully disclosing how the funds are to be handled by the property manager, who will benefit from the interest earnings, how and when interest earnings will be paid and any limitations that may be provided for on the withdrawal of the funds deposited in the interest-bearing trust account.

This rule is intended to implement Iowa Code chapters 17A, 272C, and 543B.

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CHAPTER 16
PRELICENSE EDUCATION AND CONTINUING EDUCATION
[Prior to 9/4/02, see 193E—Ch 3]

193E—16.1(543B) Definitions. For the purpose of these rules, the following definitions shall apply:

“*Affirmative marketing*” means the entire scope of social laws and ethics that are concerned with civil rights as they apply especially to housing and to the activities of real estate licensees.

“*Approved program, course, or activity*” means a continuing education program, course, or activity meeting the standards set forth in these rules which has received advance approval by the commission pursuant to these rules.

“*Approved provider*” means a person or an organization that has been approved by the commission to conduct continuing education activities pursuant to these rules.

“*Broker*” means any person holding an Iowa real estate broker license as defined in Iowa Code section 543B.3.

“*Commission*” means the real estate commission.

“*Continuing education*” means education required as a condition to license renewal.

“*Credit hour*” means the value assigned by the commission to a prelicense or continuing education program, course, or activity.

“*Distance education*” means a planned teaching/learning experience that utilizes a wide spectrum of technology-based systems, including computer-based instruction, to reach learners at a distance. Home-study courses that include written materials, exercises and tests mailed to the provider for review are included in this definition.

“*Guest speaker*” means an individual who teaches a real estate education course on a one-time-only or very limited basis and who possesses a unique depth of knowledge and experience in the subject matter the individual proposes to teach.

“*Hour*” means 50 minutes of instruction.

“*Inactive license*” means either a broker or salesperson license certificate that is on file in the commission office and during which time the licensee is precluded from engaging in any of the acts of Iowa Code chapter 543B.

“*Licensee*” means any person holding an Iowa real estate salesperson license or Iowa real estate broker license.

“*Live instruction*” means an educational program delivered in a traditional classroom setting whereby the instructor and student carry out their essential tasks while together.

“*Prelicense course*” means instruction consisting of one or more courses meeting the requirements of Iowa Code section 543B.15.

“*Salesperson*” means any person holding an Iowa real estate salesperson license as defined in Iowa Code section 543B.5(3).

193E—16.2(543B) Salesperson prelicense and postlicense requirements.

16.2(1) Required course of study. The required course of study for the salesperson licensing examination shall consist of 60 classroom or computer-based hours of real estate principles and practices to comply with the requirements of Iowa Code section 543B.15. The curriculum shall include, but not be limited to, the following subjects:

- Introduction to Real Estate and Iowa License Law 12 hours
- Ownership, Encumbrances, Legal Descriptions, Transfer of Title and Closing 12 hours
- Contracts, Agency and Antitrust 12 hours
- Valuation, Finance and Real Estate Math 12 hours
- Property Management/Leasing, Fair Housing, Environmental Risks
and Health Issues 12 hours

16.2(2) Maintaining active status. All first-time salespersons renewing licenses to maintain active status shall complete 36 commission-approved classroom hours by December 31 of the third year of licensure. The following courses satisfy the first license renewal continuing education requirement:

Developing Professionalism and Ethical Practices	12 hours
Buying Practices	12 hours
Listing Practices	12 hours

16.2(3) Beginning January 1, 2009, and thereafter, an applicant applying for an original salesperson license must provide evidence of successful completion of the following courses: 12 hours of Developing Professionalism and Ethical Practices, 12 hours of Buying Practices and 12 hours of Listing Practices. This education is in addition to the 60-hour salesperson prelicense course. The applicant must complete all the required education during the 12 months prior to taking the examination.

16.2(4) All salespersons licensed on January 1, 2009, or thereafter, as a requirement of license renewal and to maintain active status, must complete a minimum of 36 hours of approved courses. The continuing education must be completed during the three calendar years of the license term and cannot be carried over to another license term. Approved courses in the following subjects shall be completed to renew to active status: 8 hours of Law Update, 4 hours of Ethics and 24 hours of electives.

16.2(5) Completion of prelicense education. Successful completion of the salesperson prelicense education includes passage of an examination(s) designed by the approved provider that is sufficiently comprehensive to measure the student's knowledge of all aspects of the course(s). Times allotted for examinations may be regarded as hours of instruction.

16.2(6) Substitution of courses. Written requests for substitution of the salesperson prelicense and postlicense education courses specified in 16.2(1), 16.2(2) and 16.2(3) may be granted if the applicant submits evidence of successful completion of a course or courses which are substantially similar to the courses specified in 16.2(1), 16.2(2) and 16.2(3). Any course completed more than 12 months prior to commission consideration for approval shall not qualify for substitution.

193E—16.3(543B) Broker prelicense education requirements.

16.3(1) *Required course of study.* The required course of study to take the broker examination shall consist of at least 72 classroom hours. Approved courses shall be completed within 24 months prior to the applicant's taking the broker examination and shall include the following subjects:

Contract Law and Contract Writing	8 hours
Iowa Real Estate Trust Accounts	8 hours
Principles of Appraising and Market Analysis	8 hours
Real Estate Law and Agency Law	8 hours
Real Estate Finance	8 hours
Federal and State Laws Affecting Iowa Practice	8 hours
Real Estate Office Organization	8 hours
Real Estate Office Administration	8 hours
Human Resources Management	8 hours

16.3(2) *Completion of prelicense education.* Successful completion of the broker prelicense education includes passage of an examination(s) designed by the approved provider that is sufficiently comprehensive to measure the student's knowledge of all aspects of the course(s). Times allotted for examinations may be regarded as hours of instruction. Effective January 1, 2005, and thereafter, all persons applying for a broker license within their first renewal term must complete the 36-hour salesperson postlicense courses, including 12 hours of Developing Professionalism and Ethical Practices, 12 hours of Buying Practices and 12 hours of Listing Practices, before a broker license can be issued.

16.3(3) *Substitution of courses.* Written requests for substitution of the broker prelicense education courses specified in 16.3(1) may be granted if the applicant submits evidence of successful completion of a course or courses which are substantially similar to the courses specified in 16.3(1). Any course completed more than 24 months prior to commission consideration for approval shall not qualify for substitution.

193E—16.4(543B) Continuing education requirements.

16.4(1) All individual real estate licenses are issued for three-year terms, counting the remaining portion of the year of issue as a full year. All individual licenses expire on December 31 of the third year of the license term.

16.4(2) As a requirement of license renewal in an active status, each real estate licensee shall complete a minimum of 36 hours of approved programs, courses or activities. The continuing education must be completed during the three calendar years of the license term and cannot be carried over to another license. Approved courses in the following subjects shall be completed to renew to active status, except in accordance with 16.2(2):

Law Update	8 hours
Ethics	4 hours
Electives	24 hours

16.4(3) During each three-year renewal period a course may be taken for credit only once. A course may be repeated for credit only if the course numbers and instructors are different.

16.4(4) A maximum of 18 hours of continuing education may be taken by correspondence/home study each three-year renewal period.

16.4(5) A licensee unable to attend educational offerings because of a disability may make a written request to the commission setting forth an explanation and verification of the disability. Licensees making requests must meet the definition of a person with a disability found in the Americans with Disabilities Act.

16.4(6) In addition to courses approved directly by the commission, the following will be deemed acceptable as continuing education:

a. Credits earned in a state which has a continuing education requirement for renewal of a license if the course is approved by the real estate licensing board of that state for credit for renewal. However, state-specific courses are not acceptable.

b. Courses sponsored by the National Association of Realtors (NAR) or its affiliates.

193E—16.5(543B) Continuing education records. Applicants for license renewal pursuant to Iowa Code section 543B.15 shall certify that the number of hours of continuing education required to renew a license was completed as described in 16.2(2) and 193E—16.4(543B).

16.5(1) The commission will verify by random audit the education claimed by the licensee. It shall be the responsibility of the licensee to maintain records that support the continuing education claimed and the validity of the credits. Documentation shall be retained by the licensee for a period of three years after the effective date of the license renewal.

16.5(2) It will not be acceptable for a licensee to complete the required continuing education after the fact, pursuant to 16.2(5) and 16.3(3).

16.5(3) Failure to provide required evidence of completion of claimed education within 30 days of the written notice from the commission shall result in the licensee's being placed on inactive status. Prior to activating a license that has been placed on inactive status pursuant to this provision, the licensee must submit to the commission satisfactory evidence that all required continuing education has been completed.

16.5(4) Filing a false affirmation is prima facie evidence of a violation of Iowa Code sections 543B.29(1) and (3).

193E—16.6(543B) Reactivating an inactive license. A license may be renewed without the required continuing education, but it shall only be renewed to an inactive status. Prior to reactivating a license that has been issued inactive due to failure to submit evidence of continuing education, the licensee must submit evidence that all deficient continuing education hours have been completed. The maximum continuing education hours shall not exceed the prescribed number of hours of one license renewal period and must be completed during the three calendar years preceding activation of the license.

193E—16.7(543B) Full-time attendance. Successful completion of continuing education requires full-time attendance throughout the program, course or activity. A student who arrives late, leaves during class or leaves early may not receive a certificate.

193E—16.8(543B) Education requirements for out-of-state licensees. Subrules 16.2(2) and 16.4(2) shall apply to every Iowa real estate licensee unless exempted by Iowa Code subsection 272C.2(5).

193E—16.9(543B) Examination as a substitute for continuing education.

16.9(1) A salesperson may satisfy all continuing education deficiencies by taking and passing the real estate salesperson examination.

a. If the salesperson takes and passes the salesperson examination within the six months immediately preceding the expiration of the license, the salesperson examination score report may be substituted for the required hours of continuing education credit for the current license term and will satisfy all previous deficiencies.

b. A salesperson who is otherwise qualified to be a broker and who passes the broker licensing examination is not required to furnish evidence of credit for continuing education earned as a salesperson.

16.9(2) A broker may satisfy all continuing education deficiencies by taking and passing the real estate broker examination. If the broker takes and passes the broker examination within the six months immediately preceding the expiration of the license, the broker examination score report may be substituted for the required hours of continuing education credits for the current license term and will satisfy all previous deficiencies.

193E—16.10(543B) Use of prelicense and postlicense courses as continuing education.

16.10(1) Salespersons and brokers may take up to 24 hours of the salesperson prelicense and postlicense courses specified in 16.2(1) and 16.2(2) as continuing education. However, a newly licensed salesperson cannot use credits from the salesperson prelicense course(s) to meet the continuing education requirement of the first renewal term.

16.10(2) Broker prelicense courses taken by a salesperson may be applied as continuing education for renewal of the salesperson license and also may be used as prelicense credit to qualify for a broker license.

16.10(3) A broker may take broker prelicense courses as continuing education, but a newly licensed broker cannot use as continuing education credits from the prelicense courses taken to qualify for the broker license.

193E—16.11(543B) Requests for prior approval or postapproval of a course(s). A licensee seeking credit for attendance and participation in a course, program, or other continuing education activity that is to be conducted by a school not otherwise approved by the commission may apply for approval to the commission at least 21 days in advance of the beginning of the activity. The commission shall approve or deny the application in writing within 14 days of receipt of the application.

16.11(1) The application for prior approval of a course or an activity shall include the following information:

1. School or organization or person conducting the activity.
2. Location of the activity.
3. Title and brief description of the activity.
4. Credit hours requested.
5. Date of the activity.
6. Principal instructor(s).

16.11(2) The application for postapproval of a course or an activity shall include the following information:

1. School, firm, organization or person conducting the activity.
2. Location of the activity.
3. Title and description of activity.

4. Credit hours requested for approval.
5. Date of the activity.
6. Principal instructor(s).
7. Verification of attendance.

These rules are intended to implement Iowa Code chapters 17A, 272C, and 543B.

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[◇] Two or more ARCs

¹ Effective date (8/14/91) of amendments to 3.1, unnumbered paragraphs 3, 8; 3.2(1-4); 3.3(2-9); 3.4(1); 3.4(2)“o”; 3.4(5)“h”; and rules 3.5 and 3.6 delayed 70 days by the Administrative Rules Review Committee. Delay lifted 8/21/91, effective 8/22/91.

CHAPTER 17
APPROVAL OF SCHOOLS, COURSES AND INSTRUCTORS
[Prior to 9/4/02, see 193E—3.5(543B)]

193E—17.1(543B) Administrative requirements for schools, courses and instructors. All schools, courses and instructors of prelicense and continuing education must receive advance approval of the commission.

17.1(1) Schools, courses and instructors are approved on forms prescribed by the commission for 24-month periods, including the month of approval. Approval must be obtained for each course that an instructor proposes to teach.

17.1(2) A course outline and all required forms shall be submitted for approval at least 30 days prior to the first offering of the program, course or activity.

17.1(3) Evidence of compliance with or exemption from Iowa Code sections 714.14 to 714.25 must be furnished to the commission.

17.1(4) Potential participants of all approved courses shall be clearly informed of the hours to be credited, policies concerning registration, payment of fees, refunds and attendance requirements.

17.1(5) School staff and instructors shall allow access to any classes conducted to any member of the commission or its duly appointed representatives.

17.1(6) No part of any approved course shall be used to advertise or solicit orally or in writing any product or service.

17.1(7) The school must show that procedures are in place to ensure that the student who completes an approved course is the student who enrolled in the course.

17.1(8) School staff and instructors shall be available during normal business hours to answer student questions and provide assistance as necessary.

17.1(9) The commission may at any time evaluate an approved school or instructor. If the commission finds there is a basis for consideration of revocation of the approval of the school or the instructor, the commission shall give notice by ordinary mail to the coordinator of that school or to the instructor of a hearing on the possible revocation at least 20 days prior to the hearing.

17.1(10) The commission may deny or withdraw approval of a program, course, or activity, but the decision to deny or withdraw approval may be appealed within 20 days of the date of mailing the notice of denial or withdrawal.

17.1(11) Each application for approval shall designate an individual as coordinator for the school in responsible charge of its operation who shall be the contact with the commission. The coordinator is responsible for complying with the commission's rules relating to schools and for submitting reports and information as may be required by the commission.

17.1(12) An approved school shall not apply to itself either as part of its name or in any other manner the designation of "college" or "university" in such a way as to give the impression that it is an educational institution conforming to the standards and qualifications prescribed for colleges and universities unless the school, in fact, meets those standards and qualifications.

17.1(13) Advertising and prospectus information. No approved school shall provide any information to the public or to prospective students that is misleading in nature.

17.1(14) Maximum hours of instruction. There shall be no more than eight classroom hours in any single day of instruction.

17.1(15) Each approved school shall establish and maintain for each individual student a complete, accurate and detailed record of instruction undertaken and satisfactorily completed in the areas of study prescribed by these rules. The records shall be maintained for a period of not less than five years. The commission shall assign a number to each approved school and shall assign a number to each approved program, course or activity. The approved school shall include these reference numbers in correspondence with the commission and must include these numbers on certificates of attendance issued by the approved school.

193E—17.2(543B) Certificates of attendance.

17.2(1) Each approved school under rule 193E—17.1(543B) shall provide an individual certificate of attendance to each licensee upon completion of the program, course, or activity. The certificate shall contain the following information:

- a. School name and number;
- b. Program, course or activity name and number;
- c. Name and address of licensee;
- d. Date program, course or activity was completed;
- e. Number of approved credit hours;
- f. Signature of coordinator or other person authorized by the commission; and
- g. A notation as to whether credit hours are to be used as prelicense or as continuing education.

17.2(2) Salespersons taking broker prelicense courses may request two certificates, one identified as prelicense course credit and one identified as continuing education course credit.

17.2(3) The attendance certificate shall be no larger than 8 ½" × 11".

17.2(4) An attendance certificate shall not be issued to a licensee who is absent from a continuing education program, course, or activity. The program, course, or activity must be completed in its entirety. A student who arrives late, leaves during class or leaves early may not receive an attendance certificate.

193E—17.3(543B) Instructors taking license examinations for auditing purposes.

17.3(1) Instructors who take the salesperson or broker examination for auditing purposes must first obtain written consent from the commission.

17.3(2) Any instructor who wishes to retake an examination for auditing purposes may be granted permission after 12 months have passed.

193E—17.4(543B) Continuing education credit for instructors.

17.4(1) Commission-approved instructors may receive up to six hours of continuing education credit toward renewal of a real estate license for verified attendance at an instructor development workshop approved by the commission. The instructor may use continuing education credit only once in each three-year renewal period.

17.4(2) An instructor may receive continuing education credit for approved education courses that the instructor teaches, but not more than six hours of credit in any three-year license renewal period.

193E—17.5(543B) Acceptable course topics.

17.5(1) The commission will consider courses in the following areas to be acceptable for approval:

- a. Real estate ethics;
- b. Legislative issues that influence real estate practice, including both pending and recent legislation;
- c. The administration of licensing provisions of real estate law and rules, including compliance and regulatory practices;
- d. Real estate financing, including mortgages and other financing techniques;
- e. Real estate market analysis and evaluation, including site evaluations, market data, and feasibility studies;
- f. Real estate brokerage administration, including office management, trust accounts, and employee contracts;
- g. Real estate mathematics;
- h. Real property management, including leasing agreements, accounting procedures, and management contracts;
- i. Real property exchange;
- j. Land use planning and zoning;
- k. Real estate securities and syndications;
- l. Estate building and portfolio management;
- m. Accounting and taxation as applied to real property;

- n.* Land development;
- o.* Market analysis; and
- p.* Real estate market procedures.

17.5(2) Other course topics. A course topic may be approved if it is determined that it includes such facts, concepts and current information about which licensees must be knowledgeable to conduct real estate negotiations and transactions and better protect client, customer and public interest. The same criteria will be used to evaluate courses that do not otherwise qualify under rule 193E—17.5(543B).

193E—17.6(543B) Nonqualifying courses. The following course offerings do not qualify as continuing education:

17.6(1) Courses of instruction designed to prepare a student for passing the real estate salesperson examination;

17.6(2) Sales promotion or other meetings held in conjunction with a licensee's general business;

17.6(3) Course time devoted to breakfast, lunch, or dinner;

17.6(4) A course certified by the use of a challenge examination. All students must complete the required number of classroom hours to receive certification;

17.6(5) Meetings which are a normal part of in-house staff or employee training;

17.6(6) Orientation courses for licensees, such as those offered through local real estate boards.

193E—17.7(543B) Standards for approval of courses of instruction. The commission may approve live classroom instruction, distance education programs and paper and pencil home-study courses, subject to the following conditions:

17.7(1) The course pertains to real estate topics that are integrally related to the real estate industry; and

17.7(2) The course allows the participants to achieve a high level of competence in serving the objectives of consumers who engage the services of licensees; and

17.7(3) The course qualifies for at least three credit hours.

193E—17.8(543B) Responsibilities of instructors and course developers.

17.8(1) Instructors shall be competent in the subject matter and skilled in the use of appropriate teaching methods that have been proven effective through educational research and development.

17.8(2) Course content and materials must be accurate and consistent with currently accepted standards relating to the program's subject matter.

17.8(3) Instructor and student materials must be updated no later than 30 days after the effective date of a change in standards, laws or rules. Course content will not be considered current and up-to-date unless the new standards have been incorporated into the course or the instructor informs the participants of the new standards.

17.8(4) Instructors shall attend workshops or instructional programs, as reasonably requested by the commission, to ensure that effective teaching techniques are used and current, relevant and accurate information is taught.

17.8(5) All courses shall have an appropriate means of written evaluation by the participants. Evaluations shall include but not be limited to relevance of material, effectiveness of presentation and course content.

193E—17.9(543B) Standards for approval of classroom courses.

17.9(1) The commission may approve live classroom courses, subject to the following requirements.

17.9(2) The course application shall be accompanied by a comprehensive course outline that includes:

- a.* Description of course.
- b.* Purpose of course.
- c.* Level of difficulty.

- d.* Detailed learning objectives for each major topic that specify the level of knowledge or competency the student should demonstrate upon completing the course.
- e.* Description of the instructional methods utilized to accomplish the learning objectives.
- f.* Copies of all instructor and student course materials.
- g.* Course examination(s) or the diagnostic assessment method(s) utilized to achieve the course learning objectives, when applicable.
- h.* A description of the plan in place to periodically review course material with regard to changing federal and state statutes.
- i.* A statement of any attendance make-up policy that the school has in place.

193E—17.10(543B) Standards for approval of distance education courses. The commission may approve distance education courses, subject to the following requirements:

17.10(1) The provider's purpose or mission statement is available to the public.

17.10(2) The course outline must include clearly stated learning objectives and desired student competencies for each module of instruction and a description of how the program promotes interaction between the learner and the program.

17.10(3) The course content must be accurate and up-to-date. The provider must describe the plan in place to periodically review course material with regard to changing federal and state statutes.

17.10(4) The course must be designed to ensure that student progress is evaluated at appropriate intervals and mastery of the material is achieved before a student can progress through the course material.

17.10(5) The provider must show that qualified individuals are involved in the design of the course.

17.10(6) The provider must list individuals who provide technical support to students and state the specific times when support is available.

17.10(7) A manual shall be provided to each registered student. It shall include, but not be limited to, faculty contact information, student assignments and course requirements, broadcast schedules, testing information, passing scores, resource information, fee schedule and refund policy.

17.10(8) The provider must retain a statement signed by the student that affirms that the student completed the required work and examinations.

17.10(9) The provider must state in the course materials that the information presented in the course should not be used as a substitute for competent legal advice.

17.10(10) Courses submitted for approval must be sufficient in scope and content to justify the hours requested by the provider.

17.10(11) Courses that have obtained approval from the Association of Real Estate License Law Officials (ARELLO) are automatically approved in Iowa.

17.10(12) All computer-based continuing education and prelicense courses must be completed within six months of the date of purchase.

193E—17.11(543B) Standards for approval of paper and pencil home-study courses. The commission may approve paper and pencil home-study courses, subject to the following requirements:

17.11(1) Courses must be arranged in chapter format and include a table of contents.

17.11(2) Overview statements that preview the content of the chapter must be included for each chapter.

17.11(3) Courses must be designed to ensure that student progress is evaluated at appropriate intervals. The assessment process shall measure what each student has learned and not learned at regular intervals throughout each module of the course. The student must complete and return quizzes to the provider to receive credit for the course.

17.11(4) Final examinations must contain a minimum of 30 questions for a three-hour course and 60 questions for a six-hour course.

17.11(5) A passing score of 90 percent is required for course credit to be granted. There is no limit to the number of times a final examination may be taken to achieve a passing score.

17.11(6) A licensee has six months from the date of purchase to complete all quizzes and assignments and to pass the final examination.

17.11(7) The provider must include information that clearly informs the licensee of the course completion deadline, passing score required, chapter quiz completion requirements and any other relevant information regarding the course.

17.11(8) The provider shall state in the course materials that the information presented in the course should not be used as a substitute for competent legal advice.

17.11(9) The provider shall retain a statement signed by the student that affirms that the student completed the required work and examinations.

17.11(10) The provider must be available to answer student questions or provide assistance as necessary during normal business hours.

17.11(11) Courses submitted for approval must be sufficient in scope and content to justify the hours requested by the provider.

193E—17.12(543B) Qualifying as an instructor.

17.12(1) Individuals may be approved to teach prelicense and continuing education when they have shown proof of attendance at an instructor development workshop approved by the commission within 12 months preceding approval and have met the instructor qualification criteria.

17.12(2) Guest speakers and individuals currently certified by a nationally recognized organization, such as a DREI, that requires similar instructor standards are exempt, with prior approval of the commission, from the instructor qualification criteria and the instructor development workshop requirement.

17.12(3) An applicant may be approved as an instructor when it is determined that the applicant evidences the ability to teach and communicate and possesses in-depth knowledge of the subject matter to be taught.

a. The applicant shall demonstrate the ability to teach by meeting at least one of the following requirements:

- (1) Holds a bachelor's degree or higher in education from an accredited college (copy(ies) of transcript(s) to be attached); or
- (2) Holds a current teaching credential or certificate in any field (copy to be attached); or
- (3) Holds a certificate of completion from a real estate instructor institute, workshop or school approved by the real estate commission and has experience in the area of instruction (specific teaching experiences to be detailed); or
- (4) Holds a full-time current appointment to the faculty of an accredited college; or
- (5) Holds a current teaching designation from an organization approved by the real estate commission (evidence to be attached).

b. The applicant shall demonstrate in-depth knowledge of the subject matter by meeting at least one of the following requirements:

- (1) Holds a bachelor's degree or higher from an accredited college with a major in a field of study directly related to the subject matter of the course the applicant proposes to teach, such as business, economics, accounting, real estate or finance (copy of transcript to be attached); or
- (2) Holds a bachelor's degree or higher from an accredited college and five years of real estate experience directly related to the subject matter of the course the applicant proposes to teach (copy of transcript to be attached and documentation to explain how applicant's experience is directly related to the subject matter the applicant proposes to teach); or
- (3) Be a licensed attorney in practice for at least three years in an area directly related to the subject matter of the course the applicant proposes to teach; or
- (4) Be a highly qualified professional with a generally recognized professional designation such as, but not limited to, FLI, MAI, SIOR, SREA, CRB, CRS, CPM, but not including GRI, and two years of education from a postsecondary institution (evidence of both to be attached); or
- (5) Have extensive instructional background in real estate education and experience in real estate as evidenced by a valid broker's license or five years of active real estate experience as a salesperson

(evidence to be provided). In addition, three recently written letters of recommendation that attest to the applicant's in-depth knowledge combined with the ability to teach and communicate the subject the applicant proposes to teach; or

(6) Other, as the commission may determine.

These rules are intended to implement Iowa Code chapters 17A, 272C, and 543B.

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CHAPTER 18
INVESTIGATIONS AND DISCIPLINARY PROCEDURES

[Prior to 9/4/02, see 193E—Ch 4]

193E—18.1(17A,272C,543B) Disciplinary and investigative authority. The commission is empowered to administer Iowa Code chapters 17A, 272C, and 543B and related administrative rules for the protection and well-being of those persons who may rely upon licensed individuals for the performance of real estate services within this state or for clients in this state. To perform these functions, the commission is broadly vested with authority, pursuant to Iowa Code sections 17A.13, 272C.3 to 272C.6, 272C.10, 543B.9, 543B.29, 543B.34 to 543B.41, and 543B.61, to review and investigate alleged acts or omissions of licensees, determine whether disciplinary proceedings are warranted, initiate and prosecute disciplinary proceedings, establish standards of professional conduct, and impose discipline.

193E—18.2(17A,272C,543B) Grounds for discipline. The commission may initiate disciplinary action against a licensee on any of the following grounds:

1. All grounds set forth in Iowa Code sections 543B.29, 543B.34 and 543B.61.
2. A violation of the rules of professional and business conduct described in 193E—Chapters 6 to 8, 10 to 15, and 19.
3. Failure to comply with an order of the commission imposing discipline.
4. Violation of Iowa Code sections 272C.3(2) and 272C.10.
5. Continuing to practice real estate with an expired or inactive license, or without satisfying the continuing education mandated by 193E—Chapter 16 or the errors and omissions insurance mandated by 193E—Chapter 19.
6. Knowingly aiding or abetting a licensee, license applicant or unlicensed person in committing any act or omission which is a ground for discipline under this rule or otherwise knowingly aiding or abetting the unlicensed practice of real estate in Iowa.
7. Failure to fully cooperate with a licensee disciplinary investigation, including failure to respond to a commission inquiry within 14 calendar days of the date of mailing by certified mail of a written communication directed to the licensee's last address on file at the commission office.
8. A violation of one or more of the acts or omissions upon which civil penalties may be imposed, as described in 18.14(5).

193E—18.3(17A,272C,543B) Initiation of disciplinary investigations. The commission may initiate a licensee disciplinary investigation upon the commission's receipt of information suggesting that a licensee may have violated a law or rule enforced by the commission which, if true, would constitute a ground for licensee discipline.

193E—18.4(272C,543B) Sources of information. Without limitation, the following nonexclusive list of information sources may form the basis for the initiation of a disciplinary investigation or proceeding:

1. News articles or other media sources.
2. Reports filed with the commission by the commissioner of insurance pursuant to Iowa Code subsection 272C.4(9).
3. Complaints filed with the commission by any member of the public.
4. License applications or other documents submitted to the commission.
5. Reports to the commission from any regulatory or law enforcement agency from any jurisdiction.
6. Commission audits of licensee compliance, such as those involving continuing education, trust accounts, or errors and omissions insurance.

193E—18.5(17A,272C,543B) Conflict of interest. If the subject of a complaint is a member of the commission, or if a member of the commission has a conflict of interest in any disciplinary matter before

the commission, that member shall abstain from participation in any consideration of the complaint and from participation in any disciplinary hearing that may result from the complaint.

193E—18.6(272C,543B) Complaints. Written complaints may be submitted to the commission office by mail, E-mail, facsimile, or personal delivery by any member of the public with knowledge of possible law or rule violations by licensees. Timely filing is encouraged to ensure the availability of witnesses and to avoid initiation of an investigation under conditions which may become substantially altered during a period of delay.

18.6(1) Contents of a written complaint. Written complaints may be submitted on forms provided by the commission which are available from the commission office and on the commission's Web site. Written complaints, whether submitted on a commission complaint form or in other written medium, shall contain the following information:

- a. The full name, address, and telephone number of the complainant (person complaining).
- b. The full name, address, and telephone number of the respondent (licensee against whom the complaint is filed).
- c. A statement of the facts and circumstances giving rise to the complaint, including a description of the alleged acts or omissions which the complainant believes demonstrates that the respondent has violated or is violating laws or rules enforced by the commission.
- d. If known, citations to the laws or rules allegedly violated by the respondent.
- e. Evidentiary supporting documentation.
- f. Steps, if any, taken by the complainant to resolve the dispute with the respondent prior to filing a complaint.
- g. The address of the property involved.

18.6(2) Immunity. As provided by Iowa Code section 272C.8, a person shall not be civilly liable as a result of filing a report or complaint with the commission unless such act is done with malice, nor shall an employee be dismissed from employment or discriminated against by an employer for filing such a report or complaint.

18.6(3) Role of complainant. The role of the complainant in the disciplinary process is limited to providing the commission with factual information relative to the complaint. A complainant is not party to any disciplinary proceeding which may be initiated by the commission based in whole or in part on information provided by the complainant.

18.6(4) Role of the commission. The commission does not act as an arbiter of disputes between private parties, nor does the commission initiate disciplinary proceedings to advance the private interests of any person or party. The role of the commission in the disciplinary process is to protect the public by investigating complaints and initiating disciplinary proceedings in appropriate cases. The commission possesses sole decision-making authority throughout the disciplinary process, including the authority to determine whether a case will be investigated, the manner of the investigation, whether a disciplinary proceeding will be initiated, and the appropriate licensee discipline to be imposed, if any.

18.6(5) Initial complaint screening. All written complaints received by the commission shall be initially screened by the commission's administrator or designated staff to determine whether the allegations of the complaint fall within the commission's investigatory jurisdiction and whether the facts presented, if true, would constitute a basis for disciplinary action against a licensee. Complaints which are clearly outside the commission's jurisdiction, which clearly do not allege facts upon which disciplinary action would be based, or which are frivolous may be closed by the commission administrator or may be referred by the commission administrator to the commission for closure at the next scheduled commission meeting. All other complaints shall be referred by the commission administrator to the commission's disciplinary committee for committee review as described in rule 193E—18.9(17A,272C,543B). If a complainant objects in writing to the closure of the complaint by the commission administrator, the administrator will refer the objection to the disciplinary committee or commission for reconsideration.

18.6(6) *Withdrawal or amendment.* A complaint may be amended or withdrawn at any time prior to official notification of the respondent and thereafter at the sole discretion of the commission. The commission may choose to pursue a matter even after a complaint has been withdrawn.

193E—18.7(272C,543B) Case numbers. Whether based on a written complaint received by the commission or a complaint initiated by the commission, all complaint files shall be tracked by a case numbering system. Complaints are assigned case numbers in chronological order with the first two digits representing the year in which the complaint was received or initiated, and the second three digits representing the order in which the case file was opened (e.g., 01-001, 01-002, 01-003, etc.). The commission's administrator shall maintain a case file log noting the date each case file was opened, whether disciplinary proceedings were initiated in the case, and the final disposition of the case. Once a case file number is assigned to a complaint, all persons communicating with the commission regarding that complaint are encouraged to include the case file number to facilitate accurate records and prompt response.

193E—18.8(272C,543B) Confidentiality of complaint and investigative information. All complaint and investigative information received or created by the commission is privileged and confidential pursuant to Iowa Code subsection 272C.6(4) and as such shall not be subject to discovery, subpoena, or other means of legal compulsion for release to any person except as provided in Iowa Code section 272C.6.

193E—18.9(17A,272C,543B) Investigation procedures.

18.9(1) *Disciplinary committee.* The commission chair may appoint two members of the commission to serve on a commission disciplinary committee. The chair may appoint a standing committee or may appoint different members to serve on the committee on an as-needed basis. The disciplinary committee is a purely advisory body which shall review complaint files referred by the commission's administrator, generally supervise the investigation of complaints, and make recommendations to the full commission on the disposition of complaints. Except as provided by rule 193E—18.10(17A,272C,543B), members of the committee shall not personally investigate complaints, but they may review the investigative work product of others in formulating recommendations to the commission.

18.9(2) *Committee screening of complaints.* Upon the referral of a complaint from the commission's administrator or from the full commission, the committee shall determine whether the complaint presents facts which, if true, suggest that a licensee may have violated a law or rule enforced by the commission. If the committee concludes that the complaint does not present facts which suggest such a violation or that the complaint does not otherwise constitute an appropriate basis for disciplinary action, the committee shall refer the complaint to the full commission with the recommendation that it be closed with no further action. If the committee determines that the complaint does present a credible basis for disciplinary action, the committee may either immediately refer the complaint to the full commission recommending that a disciplinary proceeding be commenced or initiate a disciplinary investigation.

18.9(3) *Committee procedures.* If the committee determines that additional information is necessary or desirable to evaluate the merits of a complaint, the committee may assign an investigator or expert consultant, appoint a peer review committee, provide the licensee an opportunity to appear before the disciplinary committee for an informal discussion as described in rule 193E—18.10(17A,272C,543B) or request commission staff to conduct further investigation. Upon completion of an investigation, the investigator, expert consultant, peer review committee or commission staff shall present a report to the committee. The committee shall review the report and determine what further action is necessary. The committee may:

- a. Request further investigation.
- b. Determine there is not probable cause to believe a disciplinary violation has occurred and refer the case to the full commission with the recommendation of closure.

c. Determine there is probable cause to believe that a law or rule enforced by the commission has been violated, but that disciplinary action is unwarranted on other grounds, and refer the case to the full commission with the recommendation of closure. The committee may also recommend that the licensee be informally cautioned or educated about matters which could form the basis for disciplinary action in the future.

d. Determine there is probable cause to believe a disciplinary violation has occurred and either attempt informal settlement, subject to approval by the full commission, or refer the case to the full commission with the recommendation that the commission initiate a disciplinary proceeding (contested case).

e. Stay further action on the complaint if, for instance, there is a pending criminal case or civil litigation and the committee feels it would be in the best interest of the public and respondent to await the final outcome of the litigation. Additionally, the committee may stay further action on a complaint when the respondent's license is expired or revoked.

18.9(4) Subpoena authority. The commission is authorized in connection with a disciplinary investigation to issue subpoenas to compel witnesses to testify or persons to produce books, papers, records and any other real evidence, whether or not privileged or confidential under law, which the commission deems necessary as evidence in connection with a disciplinary proceeding or relevant to the decision of whether to initiate a disciplinary proceeding, pursuant to Iowa Code sections 17A.13(1), 272C.6(3) and 543B.36. Commission procedures concerning investigative subpoenas are set forth in 193—Chapter 6.

193E—18.10(17A,272C,543B) Informal discussion. If the disciplinary committee considers it advisable, or if requested by the affected licensee, the committee may grant the licensee an opportunity to appear before the committee for a voluntary informal discussion of the facts and circumstances of an alleged violation, subject to the provisions of this rule.

18.10(1) An informal discussion is intended to provide a licensee an opportunity to share the licensee's side of a complaint in an informal setting before the commission determines whether probable cause exists to initiate a disciplinary proceeding. Licensees are not required to attend an informal discussion. Because disciplinary investigations are confidential, the licensee may not bring other persons to an informal discussion, but licensees may be represented by legal counsel. When an allegation is made against a firm, the firm may be represented by the designated broker, a managing partner, member or other firm representative.

18.10(2) Unless disqualification is waived by the licensee, commission members or staff who personally investigate a disciplinary complaint are disqualified from making decisions or assisting the decision makers at a later formal hearing. Because commission members generally rely upon investigators, peer review committees, or expert consultants to conduct investigations, the issue rarely arises. An informal discussion, however, is a form of investigation because it is conducted in a question and answer format. In order to preserve the ability of all commission members to participate in commission decision making and to receive the advice of staff, licensees who desire to attend an informal discussion must therefore waive their right to seek disqualification of a commission member or staff based solely on the commission member's or staff's participation in an informal discussion. Licensees would not be waiving their right to seek disqualification on any other ground. By electing to attend an informal discussion, a licensee accordingly agrees that a participating commission member or staff person is not disqualified from acting as a presiding officer in a later contested case proceeding or from advising the decision maker.

18.10(3) Because an informal discussion constitutes a part of the commission's investigation of a pending disciplinary case, the facts discussed at the informal discussion may be considered by the commission in the event the matter proceeds to a contested case hearing and those facts are independently introduced into evidence.

18.10(4) The disciplinary committee, subject to commission approval, may propose a consent order at the time of the informal discussion. If the licensee agrees to a consent order, a statement of charges shall be filed simultaneously with the consent order, as provided in rule 193—7.4(17A,272C).

193E—18.11(17A,272C,543B) Closing complaint files.

18.11(1) *Grounds for closing.* Upon the recommendation of the administrator pursuant to 18.6(5), the recommendation of the disciplinary committee pursuant to rule 193E—18.9(17A,272C,543B), or on its own motion, the commission may close a complaint file, with or without prior investigation. Given the broad scope of matters about which members of the public may complain, it is not possible to catalog all possible reasons why the commission may close a complaint file. The commission will take into consideration the severity of the alleged violation, the sufficiency of the evidence, the possibility that the problem can be better resolved by other means available to the parties, whether the matter has been the subject of a local board proceeding, the clarity of the laws and rules which support the alleged violation, whether the alleged violation is likely to recur, the past record of the licensee, whether the licensee has previously received a cautionary letter concerning the act or omission at issue, and other factors relevant to the specific facts of the complaint. The following nonexclusive list illustrates the grounds upon which the commission may close a complaint file:

- a. The complaint alleges matters outside the commission's jurisdiction.
- b. The complaint does not allege a reasonable or credible basis to believe that the subject of the complaint violated a law or rule enforced by the commission.
- c. The complaint is frivolous or trivial.
- d. The complaint alleges matters more appropriately resolved in a different forum, such as civil litigation to resolve a contract dispute, or more appropriately addressed by alternative procedures, such as outreach education or rule making.
- e. The matters raised in the complaint are situational, isolated, or unrepresentative of a licensee's typical practice, and the licensee has taken appropriate steps to ensure future compliance and prevent public injury.
- f. Resources are unavailable or better directed to other complaints or commission initiatives in light of the commission's overall budget and mission.
- g. Extenuating factors exist which weigh against the imposition of public discipline.

18.11(2) *Closing orders.* The commission's administrator may enter an order stating the basis for the commission's decision to close a complaint file. If entered, the order shall not contain the identity of the complainant or the respondent, and shall not disclose confidential complaint or investigative information. If entered, closing orders will be indexed by case number and shall be a public record pursuant to Iowa Code subsection 17A.3(1) "d." A copy of the order may be mailed to the complainant, if any, and to the respondent. The commission's decision whether or not to pursue an investigation, to institute disciplinary proceedings, or to close a file is not subject to judicial review.

18.11(3) *Cautionary letters.* When a complaint file is closed, the commission may issue a confidential letter of caution to a licensee which informally cautions or educates the licensee about matters which could form the basis for disciplinary action in the future if corrective action is not taken by the licensee. Informal cautionary letters do not constitute disciplinary action, but the commission may take such letters into consideration in the future if a licensee continues a practice about which the licensee has been cautioned.

18.11(4) *Reopening closed complaint files.* The commission may reopen a closed complaint file if, after closure, additional information arises which provides a basis to reassess the merits of the initial complaint.

193E—18.12(17A,272C,543B) Initiation of disciplinary proceedings. Disciplinary proceedings may only be initiated by the affirmative vote of a majority of a quorum of the commission at a public meeting. Commission members who are disqualified shall not be included in determining whether a quorum exists. When two or more members of the commission are disqualified or otherwise unavailable for any reason, the administrator may request the special appointment of one or more substitute commission members pursuant to Iowa Code section 17A.11, subsection 5.

193E—18.13(17A,272C,543B) Disciplinary contested case procedures. Unless in conflict with a provision of Iowa Code chapter 543B or commission rules in this chapter, all of the procedures set forth in 193—Chapter 7 shall apply to disciplinary contested cases initiated by the commission.

193E—18.14(272C,543B) Disciplinary sanctions.

18.14(1) *Type of sanctions.* The commission has authority to impose, alone or in combination, the following disciplinary sanctions:

- a. Revocation of a license.
- b. Suspension of a license for a period of time or indefinitely.
- c. Nonrenewal of a license.
- d. Prohibit permanently, until further order of the commission, or for a specified period of time, the engagement in specified procedures, methods or acts.
- e. Probation. As a condition to a period of probation, the commission may impose terms and conditions deemed appropriate by the commission including, but not limited to, substance abuse evaluation and such care and treatment as recommended in the evaluation or otherwise appropriate under the circumstances.
- f. Require additional continuing education. The commission may specify that a designated amount of continuing education be taken in specific subjects and may specify the time period for completing these courses. The commission may also specify whether this continuing education be in addition to the continuing education routinely required for license renewal. The commission may also specify that additional continuing education be a condition for the termination of any suspension or reinstatement of a license.
- g. Require reexamination.
- h. Impose a monitoring or supervision arrangement.
- i. Downgrade a license from a broker license to a salesperson license.
- j. Issue a reprimand.
- k. Order a physical or mental examination with periodic reports to the commission, if deemed necessary.

l. Impose civil penalties, the amount of which shall be at the discretion of the commission, but which shall not exceed \$2,500 per violation. Civil penalties may be imposed for any of the disciplinary violations specified in rule 193E—18.2(17A,272C,543B) and as listed in 18.14(5).

18.14(2) *Imposing discipline.* Discipline may only be imposed against a licensee by the affirmative vote of a majority of the members of the commission who are not disqualified. When determining the nature and severity of the sanction to be imposed against a particular licensee or groups of licensees, the commission may consider the following factors:

- a. The relative seriousness of the violation as it relates to assuring the citizens of this state professional competency.
- b. The facts of the particular violation.
- c. Number of prior violations.
- d. Seriousness of prior violations.
- e. Whether remedial action has been taken.
- f. The impact of the particular activity upon the public.
- g. Such other factors as may reflect upon the competency, ethical standards and professional conduct of the licensee, including those listed in 18.14(6).

18.14(3) *Voluntary surrender.* The commission may accept the voluntary surrender of a license to resolve a pending disciplinary contested case or pending disciplinary investigation. The commission shall not accept a voluntary surrender of a license to resolve a pending disciplinary investigation unless a statement of charges is filed along with the order accepting the voluntary surrender. Such a voluntary surrender is considered disciplinary action and shall be published in the same manner as is applicable to any other form of disciplinary order.

18.14(4) *Notification requirements.* Whenever a broker's license is revoked, suspended, restricted, or voluntarily surrendered under this chapter, the licensee shall follow the procedures set forth in rule

193E—7.3(543B). Strict compliance with these procedures shall be a condition for an application for reinstatement. Whenever a salesperson's or broker associate's license is revoked, suspended, restricted, or voluntarily surrendered under this chapter, the licensee shall immediately notify the licensee's broker, and shall:

a. Within 7 days of receipt of the commission's final order, notify in writing all clients of the fact that the license has been revoked, suspended, restricted, or voluntarily surrendered. Such notice shall advise the client to immediately contact the broker, unless the restriction at issue would not impact the real estate services provided for that client.

b. Within 30 days of receipt of the commission's final order, the licensee shall file with the commission copies of the notices sent pursuant to 18.14(4) "a." Compliance with this requirement shall be a condition for an application for reinstatement.

18.14(5) *Violations for which civil penalties may be imposed.* The following is a nonexclusive list of violations upon which civil penalties may be imposed:

- a.* Engaging in activities requiring a license when license is inactive.
- b.* Failing to maintain a place of business.
- c.* Improper care and custody of license:
 - (1) Failing to properly display license(s).
 - (2) Failing to return license in a timely manner (received within 72 hours as provided by 193E—subrules 6.1(1) and 6.1(2)).
 - (3) Failing to notify associate when license is returned.
 - (4) Failing to provide mailing address of associate when license is returned.
- d.* Failing to inform commission and remit required fees if appropriate:
 - (1) When changing business address (5 working days).
 - (2) When changing status (5 working days).
 - (3) When changing form of firm (5 working days).
 - (4) When opening a trust account by not filing a consent to examine for the account.
 - (5) When changing residence address or mailing address (5 working days).
 - (6) When independently obtained errors and omissions insurance status, coverage or provider changes (5 working days).
- e.* Maintaining inadequate transaction records such as:
 - (1) Failing to maintain a general ledger.
 - (2) Failing to maintain individual account ledgers.
 - (3) Failing to retain records on file.
- f.* Improper trust account and closing procedures:
 - (1) Failing to deposit funds as required.
 - (2) Disbursing trust funds prior to closing without written authorization.
 - (3) Withholding earnest money unlawfully when the transaction fails to consummate.
 - (4) Failing to obtain escrow agreement for undisbursed funds.
 - (5) Failing to remit and account for interest on closing statements.
 - (6) Computing closing statements improperly.
 - (7) Failing to provide closing statements.
 - (8) Retaining excess personal funds in the trust account.
 - (9) Failing as a salesperson or broker associate to immediately turn funds over to the broker.
 - (10) Failing to deposit trust funds in interest-bearing account in accordance with Iowa Code section 543B.46.
 - (11) Failing to account for and remit to the state accrued interest due in accordance with Iowa Code section 543B.46.
- g.* Failing to immediately present offer.
- h.* Advertising without identifying broker or clearly indicating advertisement is by a licensee.
- i.* Failing to provide information to the commission when requested relative to a complaint (14 calendar days).

- j.* Failing to obtain all signatures required on contracts or to obtain signatures or initials of all parties to changes in a contract.
- k.* Placing a sign on property without consent, or failure to remove a sign when requested.
- l.* Failing to furnish a progress report when requested.
- m.* Failing by a broker to supervise salespersons or broker associates.
- n.* Failing by a broker associate or salesperson to keep the employing broker informed.
- o.* Issuing an insufficient funds check to the commission for any reason or to anyone else in the individual's capacity as a real estate licensee.
- p.* Issuing an insufficient funds check on the broker's trust account.
- q.* Engaging in conduct which constitutes a prohibited practice or tying arrangement as prohibited by these rules.
- r.* Failing to inform clients of real estate brokerage firm of the date the firm will cease to be in business and the effect upon sellers' listing agreements.
- s.* Violating any of the remaining provisions in 193E—Chapters 1 to 20 inclusive, which have not heretofore been specified in this rule.

18.14(6) Amount of civil penalties. Factors the commission may consider when determining whether to assess and the amount of civil penalties include:

- a.* Whether other forms of discipline are being imposed for the same violation.
- b.* Whether the amount imposed will be a substantial deterrent to the violation.
- c.* The circumstances leading to the violation.
- d.* The severity of the violation and the risk of harm to the public.
- e.* The economic benefits gained by the licensee as a result of the violation.
- f.* The interest of the public.
- g.* Evidence of reform or remedial action.
- h.* Time elapsed since the violation occurred.
- i.* Whether the violation is a repeat offense following a prior cautionary letter, disciplinary order, or other notice of the nature of the infraction.
- j.* The clarity of the issues involved.
- k.* Whether the violation was willful and intentional.
- l.* Whether the licensee acted in bad faith.
- m.* The extent to which the licensee cooperated with the commission.
- n.* Whether the licensee with a lapsed, inactive, suspended, restricted or revoked license improperly engaged in practices which require licensure.

193E—18.15(17A,272C,543B) Reinstatement. The term “reinstatement” as used in this rule shall include both the reinstatement of a suspended license and the issuance of a new license following the revocation, voluntary revocation, or voluntary surrender of a license.

18.15(1) Any person whose license has been revoked or suspended by the commission, or who has voluntarily surrendered a license to the commission or has agreed to a voluntary revocation of a license, may apply to the commission for reinstatement in accordance with the terms of the order of revocation, voluntary surrender, voluntary revocation, or suspension.

18.15(2) Unless otherwise provided by law, if the order of revocation, voluntary revocation, voluntary surrender, or suspension did not establish terms upon which reinstatement might occur, initial application for reinstatement may not be made until at least two years have elapsed from the date of the order or the date the commission accepted the order.

18.15(3) Following the revocation or surrender of a broker or salesperson license, an applicant for reinstatement must, as a condition of reinstatement, start over as an original applicant for a salesperson license, regardless of the type of license the applicant previously held. The applicant shall be required to satisfy all preconditions for licensure as a salesperson.

18.15(4) In addition to the provisions of rule 193—7.38(17A,272C), the following provisions shall apply to license reinstatement proceedings:

a. The commission may grant an applicant's request to appear informally before the commission prior to the issuance of a notice of hearing on an application to reinstate if the applicant requests an informal appearance in the application and agrees not to seek to disqualify, on the ground of personal investigation, commission members or staff before whom the applicant appears.

b. An order granting an application for reinstatement may impose such terms and conditions as the commission deems desirable, which may include one or more of the types of disciplinary sanctions described in rule 193E—18.14(543B).

c. The commission shall not grant an application for reinstatement when the initial order which revoked, suspended or restricted the license; denied license renewal; or accepted a voluntary surrender was based on a criminal conviction and the applicant cannot demonstrate to the commission's satisfaction that:

- (1) All terms of the sentencing or other criminal order have been fully satisfied;
- (2) The applicant has been released from confinement and any applicable probation or parole; and
- (3) Restitution has been made or is reasonably in the process of being made to any victims of the crime.

These rules are intended to implement Iowa Code chapters 17A, 272C and 543B.

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CHAPTER 19
REQUIREMENTS FOR MANDATORY ERRORS AND OMISSIONS INSURANCE
[Prior to 9/4/02, see 193E—Ch 6]

193E—19.1(543B) Insurance definitions.

“Aggregate limit” is a provision in an insurance contract limiting the maximum liability of an insurer for a series of losses in a given time period such as the policy term.

“Claims-made” means policies written under a claims-made basis will cover claims made (reported or filed) during the year the policy is in force for incidents which occur that year or during any previous period the policyholder was insured under the claims-made contract. This form of coverage is in contrast to the occurrence policy which covers today’s incident regardless of when a claim is filed even if it is one or more years later.

“Extended reporting period” is a designated period of time after a claims-made policy has expired during which a claim may be made and coverage triggered as if the claim had been made during the policy period.

“Licensee” is any active individual broker, broker associate, or salesperson; any partnership; or any corporation.

“Per claim limit” means the maximum limit payable, per licensee, for damages arising out of the same error, omission, or wrongful act.

“Prior acts coverage” applies to policies on a claims-made versus occurrence basis. Prior acts coverage responds to claims which are made during a current policy period, but the act or acts causing the claim or injuries for which the claim is made occurred prior to the inception of the current policy period.

“Proof of coverage” means a copy of the actual policy of insurance, a certificate of insurance or a binder of insurance.

“Retroactive date” is a provision found in many claims-made policies. The policy will not cover claims for injuries or damages that occurred prior to the retroactive date even if the claim is first made during the policy period.

“Umbrella type coverage” means a policy that provides insurance coverage for the broker or firm and all licensees assigned.

193E—19.2(543B) Insurance requirement—general. The group coverage insurance policy selected by the commission must be approved by the Iowa insurance division. As a condition of licensure under Iowa Code chapter 543B, all active real estate licensees shall submit evidence of compliance with the mandatory errors and omissions insurance requirement when required.

19.2(1) Who shall submit plan of coverage. The following persons must submit proof of insurance when required or when requested:

- a. Any active individual broker, broker associate, or salesperson.
- b. Any active partnership.
- c. Any active corporation.

19.2(2) Inactive status. Individuals whose licenses are on inactive status as defined in Iowa Code section 543B.5(12) are not required to carry errors and omissions insurance.

19.2(3) Territory. All resident Iowa licensees shall be covered for activities contemplated under Iowa Code chapter 543B both in and out of the state of Iowa. Nonresident licensees participating under the state plan shall not be covered both in and out of the state of Iowa unless the state plan selected by the commission will cover participating nonresidents when involved in real estate activities in the nonresident state.

19.2(4) Insurance form. Licensees may obtain errors and omissions coverage through the insurance carrier selected by the commission to provide the group policy coverage. The following are minimum requirements of the group policy to be issued to the Iowa real estate commission including, as named insureds, all licensees who have paid the required premium:

a. All activities contemplated under Iowa Code chapter 543B must be included as covered activities;

b. A per claim limit shall be not less than \$100,000;

c. An annual aggregate limit shall be not less than \$100,000;

d. Limits are to apply per licensee, per claim;

e. Defense costs are to be payable in addition to damages;

f. The contract of insurance shall pay, on behalf of the insured person(s), liabilities owed.

19.2(5) Contract period. The contract between the insurance carrier or program manager and the commission may be written for a one- to three-year period with the option to renew or renegotiate each year thereafter. The commission reserves the right to terminate the contract after written notice to the carrier at least 120 days prior to the end of any policy term and place the contract out for bid.

a. Policy periods shall be not less than 12-month policy terms.

b. The policy shall provide full and complete prior acts coverage.

(1) If the licensee purchased full prior acts coverage on or after July 1, 1991, that licensee shall continue to be guaranteed full prior acts coverage if insurance carriers are changed in the future.

(2) The retroactive date of the master policy shall never be later than July 1, 1991, for those that can provide proof of continuous coverage to that date.

(3) The retroactive date for each licensee shall be individually determined by the inception date of coverage and proof of continuous coverage to that date.

(4) The retroactive date for any new licensee who first obtains a license after July 1, 1991, shall be individually determined by the effective date of the license, the inception date of coverage, and proof of continuous coverage to that date.

19.2(6) Any licensee insured in the state selected program whose license becomes inactive will not be charged an additional premium if the license is reinstated during the policy period.

19.2(7) Any licenses issued at other than renewal and insured by the state selected program shall be subject to a pro-rata premium.

193E—19.3(543B) Other coverage. Licensees are not required to purchase insurance coverage through the group policy selected by the commission and may obtain errors and omissions coverage independently if the coverage contained in the policy complies with the following minimum requirements:

19.3(1) For active individual licensees, all provisions of Iowa Code section 543B.47 apply.

If the other coverage is an individual policy, it shall be each licensee's responsibility to provide proof of independently carried insurance coverage to the Iowa real estate commission when required.

19.3(2) For all active partnerships and corporations, otherwise known as firms, all provisions of Iowa Code section 543B.47 apply.

a. If the other coverage is an individual policy covering the firm, it shall be the designated broker's responsibility to provide proof of the firm's independently carried insurance coverage to the Iowa real estate commission when required.

b. If the other coverage is an umbrella type policy covering the firm and all licensees assigned that perform real estate activities, it shall be the responsibility of the designated broker of the firm to provide a list of licensees assigned to the firm that are covered under the firm's insurance policy to the Iowa real estate commission when required.

19.3(3) For sole-proprietor single license brokers, all provisions of Iowa Code section 543B.47 apply.

a. If the broker's other coverage is an individual policy, it shall be each licensee's responsibility to provide proof of the independently carried insurance coverage to the Iowa real estate commission when required, as provided in 19.3(1).

b. If the other coverage is an umbrella type policy covering the broker and all licensees assigned that perform real estate activities, it shall be the responsibility of the broker to provide a list of licensees assigned to the broker that are covered under the broker's insurance policy to the Iowa real estate commission when required.

19.3(4) For independently carried individual type coverage, the following minimum requirements shall apply:

a. All activities contemplated under Iowa Code chapter 543B must be included as covered activities.

b. A per claim limit shall be not less than \$100,000.

c. The maximum deductible for an individual policy for damages and defense, each licensee, and each claim shall not be more than the deductible of the commission group policy for the current policy term.

19.3(5) For firms and sole-proprietor brokerages with independently carried firm umbrella type coverage, the following minimum requirements shall apply:

a. All activities contemplated under Iowa Code chapter 543B must be included as covered activities.

b. A per claim limit shall be not less than \$100,000.

c. An aggregate limit shall be:

(1) Not less than \$250,000 for a broker or firm with 2 through 10 licensees;

(2) Not less than \$500,000 for a broker or firm with 11 through 40 licensees;

(3) Not less than \$1,000,000 for a broker or firm with 41 or more licensees.

d. There is no maximum deductible limit for firm umbrella type coverage policy.

e. If a firm size change or a sole-proprietor brokerage size change results in a higher aggregate minimum requirement, that firm or broker shall correct the deficiency within one year, or the next renewal term of the insurance policy, whichever comes first.

19.3(6) To comply with the provisions of the Iowa errors and omissions law, if other independently carried insurance is provided, as proof of errors and omissions coverage for individual or firm umbrella type coverage, the other insurance carrier shall agree to either a noncancelable policy, or provide a letter of commitment to notify the Iowa real estate commission 30 days prior to the intention to cancel the policy.

19.3(7) Whenever commission requirements, coverage, or limits change, the commission shall provide a reasonable transition period to allow the licensee or firm with other coverage the opportunity to change carriers or coverage to comply with all requirements and limits, providing the present policy was in effect and in compliance with all prior requirements. The licensee or firm shall correct the deficiency within one year, or not later than the next renewal term of the insurance policy, whichever comes first.

19.3(8) It shall be the responsibility of each individual licensee to notify the commission when changing insurance status, coverage, or provider when required or when requested.

19.3(9) It shall be the responsibility of the designated broker of the firm to notify the commission when changing insurance status, coverage, or provider when required or when requested.

19.3(10) Self-insurance does not comply with the provisions of the Iowa errors and omissions insurance law.

193E—19.4(543B) Administrative requirements—general.

19.4(1) It is the responsibility of the insurance carrier or program manager to obtain approval from the Iowa division of insurance for the group policy before inception of the program or policy period.

19.4(2) It is the responsibility of the insurance carrier or program manager to handle administrative duties relative to operation of the program selected by the commission, including billing and premium collection, toll-free access for questions, and claim processing and general informational mailings.

19.4(3) It is the responsibility of the insurance carrier or program manager to send a billing notice to each licensee.

19.4(4) It is the responsibility of the insurance carrier or program manager to collect all premiums due and verify proper payment.

A schedule of licensees who have paid the proper premium and who have coverage in force shall be provided electronically to the commission at agreed time intervals.

19.4(5) It is the responsibility of the insurance carrier or program manager to issue individual certificates to each licensee and a master policy to the commission.

19.4(6) It is the responsibility of the insurance carrier or program manager to market its program and to develop and distribute informational brochures about the coverages provided, services available and requirements of Iowa Code section 543B.47.

a. The content of any brochures or other literature provided is the responsibility of the insurance carrier or program manager.

b. Advertising materials may be reviewed by the executive officer for the commission or appropriate staff person for content only and not for a legal determination of compliance with Iowa law or division of insurance requirements.

19.4(7) It is the responsibility of the insurance carrier or program manager to provide educational seminars in the state of Iowa at the request of the commission and subject to terms and conditions agreeable to each party involved.

193E—19.5(543B) Commission responsibilities. The commission shall provide the insurance carrier or program manager an electronic schedule of all active licensees approximately three months in advance of inception (or renewal), or as otherwise agreed upon, which the insurance carrier or program manager may use to issue billing notices.

19.5(1) The insurance carrier or program manager shall provide the commission with a schedule of insured licensees. The commission will be responsible for comparing this schedule against its own records to determine which licensees elected not to participate in the state program and those that have failed to furnish the commission with acceptable proof of insurance necessary for continued licensure.

19.5(2) It shall be the responsibility of the commission to review proof of other insurance received from licensees not participating in the state program and to confirm that the other insurance meets the minimum requirements of these rules.

19.5(3) The commission may require that an approved standard form be used to submit proof of other insurance coverage for review.

193E—19.6(543B) Compliance.

19.6(1) The commission shall require receipt of proof of errors and omissions insurance from new licensees before the license is issued.

19.6(2) The commission shall require receipt of proof of errors and omissions insurance from the applicant before reinstating an expired license.

19.6(3) The commission shall require receipt of proof of errors and omissions insurance before reactivating an inactive status license to active status if the license has been inactive for more than 20 days.

19.6(4) Applicants for license renewal shall attest and certify that they have current errors and omissions insurance in effect that meets Iowa insurance requirements.

a. The commission will verify by random audit or on a test basis the insurance compliance attested to by the licensee.

b. Licensees participating in the state group program may not be audited if commission records indicate the insurance carrier or program manager has submitted current proof of coverage.

c. Licensees with other insurance coverage may not be audited if commission records indicate the current proof of coverage has been submitted.

d. The commission may random audit by any factor as will provide a reasonable sampling given the volume, purpose and scope of audit.

e. The commission may random audit as the result of any complaint filed with the commission whether or not adequate insurance coverage was questioned in the complaint.

f. The commission may audit compliance with insurance coverage at any time the commission has reasonable cause to question a licensee's compliance.

19.6(5) A licensee is required to carry insurance on an uninterrupted basis and may not avoid discipline simply by acquiring insurance after receipt of an audit notice.

19.6(6) Failure of a licensee to carry adequate insurance coverage or to submit proof of insurance to the commission within 20 calendar days of the commission's request as required shall be prima facie evidence of a violation of Iowa Code sections 543B.15(5), 543B.47(1), and 543B.47(6) and is grounds for the denial of an application for licensure, the denial of an application to renew a license, or the suspension or revocation of a license.

19.6(7) Submitting false documentation of insurance coverage, or falsely claiming to have or attesting to having insurance coverage, shall be prima facie evidence of violation of Iowa Code sections 543B.29(1) and 543B.34(1).

193E—19.7(543B) Records and retention. It is the responsibility of the licensee to maintain records which support the validity of the insurance. Documentation shall be retained by the licensee for a period of three years after the license renewal date or the anniversary of the license renewal date.

These rules are intended to implement Iowa Code chapters 17A, 272C and 543B.

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CHAPTER 20
TIME-SHARE FILING
[Prior to 9/4/02, see 193E—2.8(557A)]

193E—20.1(557A) Time-share interval filing fees. Each initial filing made pursuant to Iowa Code sections 557A.11 and 557A.12 shall be accompanied by a basic filing fee of \$100 plus \$25 for every 100 time-share intervals or fraction thereof included in the offering.

20.1(1) A registration fee shall be paid with the filing of an application for registration consolidating additional time-share intervals with a prior registration and shall be a fee of \$50 plus an additional fee of \$25 for every 100 time-share intervals or fraction thereof included in the offering.

20.1(2) A fee shall not be charged for amendments to the property report as a result of amendments to the initial filing, unless the commission determines the amendments are made for the purpose of avoiding the payment of a fee, in which event the amendment may be treated as an application for registration consolidating additional time-share intervals with a prior registration.

This rule is intended to implement Iowa Code chapter 557A.

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CHAPTER 21
ENFORCEMENT PROCEEDINGS AGAINST UNLICENSED PERSONS

193E—21.1(17A,543B) Civil penalties against unlicensed persons.

21.1(1) Commission authority. The commission is authorized to issue a cease and desist order and to impose a civil penalty of up to the greater of \$10,000 or 10 percent of the real estate sale price against any person who is not licensed by the commission but who acts in the capacity of a real estate broker or salesperson, pursuant to Iowa Code section 543B.34.

21.1(2) Unlicensed person. An “unlicensed person” includes any individual or business entity that has never been licensed by the commission, has voluntarily surrendered a license issued by the commission, or has allowed a license issued by the commission to lapse and the time in which the license could have been reinstated pursuant to rule 193E—3.6(272C,543B) or 193E—4.6(272C,543B) has passed.

193E—21.2(17A,543B) Unlawful practices. Practices by unlicensed persons which are subject to civil penalties include, but are not limited to:

1. Acts or practices by unlicensed persons which require licensure pursuant to Iowa Code sections 543B.1, 543B.3, and 543B.6, which do not fall into the exceptions listed in Iowa Code section 543B.7.
2. Representing oneself to the public as a real estate broker, broker associate, or salesperson, without first obtaining a license and otherwise complying with the requirements of Iowa Code chapter 543B, as provided in Iowa Code section 543B.1.
3. Violating one or more of the provisions of Iowa Code section 543B.34 as they relate to acts or practices by unlicensed persons.
4. Use or attempted use of a licensee’s license or an expired, suspended, revoked, or nonexistent license.
5. Falsely impersonating a licensed real estate professional.
6. Providing false or forged evidence of any kind to the commission in obtaining or attempting to obtain a license.
7. Knowingly aiding or abetting an unlicensed person in any activity identified in this rule.

193E—21.3(17A,543B) Investigations. The commission is authorized by Iowa Code sections 17A.13(1) and 543B.34 to conduct such investigations as are needed to determine whether grounds exist to issue a cease and desist order and to impose civil penalties against an unlicensed person. Such investigations shall conform to the procedures outlined in 193—Chapter 6 and 193E—Chapter 18. Complaint and investigatory files concerning unlicensed persons are not confidential except as may be provided in Iowa Code chapter 22.

193E—21.4(17A,543B) Subpoenas. Pursuant to Iowa Code sections 17A.13(1) and 543B.34, the commission is authorized in connection with an investigation of an unlicensed person to issue subpoenas to compel persons to produce books, papers, records and any other real evidence, whether or not privileged or confidential under law, which the commission deems necessary as evidence in connection with the civil penalty proceeding or relevant to the decision of whether to initiate a civil penalty proceeding. Commission procedures concerning investigatory subpoenas are set forth in 193—Chapter 6.

193E—21.5(17A,543B) Notice of intent to impose civil penalty. Prior to issuing a cease and desist order and imposing a civil penalty against an unlicensed person, the commission shall provide the unlicensed person written notice and the opportunity to request a contested case hearing. Notice of the commission’s intent to issue a cease and desist order and to impose a civil penalty shall be served by restricted certified mail, return receipt requested, or personal service in accordance with Iowa R. Civ. P. 1.305. Alternatively, the unlicensed person may accept service personally or through authorized counsel. The notice shall include the following:

1. A statement of the legal authority and jurisdiction under which the proposed cease and desist order would be issued and the civil penalty would be imposed.
2. Reference to the particular sections of the statutes and rules involved.
3. A short, plain statement of the alleged unlawful practices.
4. The dollar amount of the proposed civil penalty and the nature of the intended order to require compliance with Iowa Code chapter 543B.
5. Notice of the unlicensed person's right to a hearing and the time frame in which hearing must be requested.
6. The address to which written request for hearing must be made.

193E—21.6(17A,543B) Requests for hearings.

21.6(1) Unlicensed persons must request a hearing within 30 days of the date the notice is received if served through restricted certified mail, or within 30 days of the date of service if service is accepted or made in accordance with Iowa R. Civ. P. 1.305. A request for hearing must be in writing and is deemed made on the date of the nonmetered United States Postal Service postmark or the date of personal service.

21.6(2) If a request for hearing is not timely made, the commission chair or the chair's designee may issue an order imposing a civil penalty and requiring compliance with Iowa Code chapter 543B, as described in the notice. The order may be mailed by regular first-class mail or served in the same manner as the notice of intent to impose civil penalty.

21.6(3) If a request for hearing is timely made, the commission shall issue a notice of hearing and conduct a contested case hearing in the same manner as applicable to disciplinary cases against licensees. Rules governing such hearings may be found in 193—Chapter 7 and 193E—Chapter 18.

21.6(4) An unlicensed person who fails to timely request a contested case hearing shall have failed to exhaust "adequate administrative remedies" as that term is used in Iowa Code section 17A.19(1).

21.6(5) An unlicensed person who is aggrieved or adversely affected by the commission's final decision following a contested case hearing may seek judicial review as provided in Iowa Code section 17A.19.

21.6(6) An unlicensed person may waive the right to hearing and all attendant rights and enter into a consent order imposing a civil penalty and requiring compliance with Iowa Code chapter 543B at any stage of the proceeding upon mutual consent of the commission.

21.6(7) The notice of intent to issue an order and the order are public records available for inspection and copying in accordance with Iowa Code chapter 22. Copies may be published as provided in 193—subrule 7.30(2). Hearings shall be open to the public.

193E—21.7(17A,543B) Alternative procedure. The commission may, as an alternative to the notice and request for hearing procedures described in 193E—21.5(17A,543B) and 193E—21.6(17A,543B), issue a statement of charges and notice of hearing in a format similar to that used for licensee discipline.

193E—21.8(17A,543B) Factors to consider. The commission may consider the following when determining the amount of civil penalty to impose, if any:

1. Whether the amount imposed will be a substantial economic deterrent to the violation.
2. The circumstances leading to the violation.
3. The severity of the violation and the risk of harm to the public.
4. The economic benefits gained by the violator as a result of noncompliance.
5. The interest of the public.
6. The time lapsed since the unlawful practice occurred.
7. Evidence of reform or remedial actions.
8. Whether the violation is a repeat offense following a prior warning letter or other notice of the nature of the infraction.
9. Whether the violation involved an element of deception.
10. Whether the unlawful practice violated a prior order of the commission, court order, cease and desist agreement, consent order, or similar document.

11. The clarity of the issue involved.
12. Whether the violation was willful and intentional.
13. Whether the unlicensed person acted in bad faith.
14. The extent to which the unlicensed person cooperated with the commission.

193E—21.9(17A,543B) Enforcement options. In addition, or as an alternative, to the administrative process described in these rules, the commission may seek an injunction in district court, enter into a consent agreement with the unlicensed person, or issue an informal cautionary letter.

These rules are intended to implement Iowa Code chapters 17A and 543B.

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