

CHAPTER 16
ENFORCEMENT PROCEEDINGS AGAINST NONLICENSEES

193F—16.1(543D) Civil penalties against nonlicensees. The board may impose civil penalties by order against a person who is not certified or registered by the board pursuant to 2007 Iowa Acts, Senate File 137, based on the unlawful practices specified in 2007 Iowa Acts, Senate File 137, section 7.

For the purposes of this chapter, “nonlicensee” means a person who has never been certified or registered with the board, a person who surrendered a certificate or associate registration to the board, or a person whose certificate or associate registration has been revoked by the board.

193F—16.2(543D) Grounds for imposing civil penalties. Grounds for issuing an order requiring compliance with Iowa Code chapter 543D or imposing civil penalties up to \$1,000 for each violation include:

16.2(1) Use of the term “certified real estate appraiser” by a person who is not certified as a real estate appraiser by the board or in compliance with the temporary practice provisions of 193F—10.2(543D).

16.2(2) Use of the term “certified real estate appraiser” by a person in connection with or as part of the name or signature of a firm, partnership, corporation, or group, or in a manner that may be interpreted as referring to a firm, partnership, corporation, group, other business entity, or anyone other than an individual holder of a certificate issued by the board.

16.2(3) Use of the term “associate real estate appraiser” by a person who is not registered with the board as an associate real estate appraiser.

16.2(4) Falsely impersonating a certified real estate appraiser or associate real estate appraiser by using the certification or registration title, number or signature of a certified real estate appraiser or associate real estate appraiser, or by using the nonexistent certification or registration title, number or signature of a fictitious holder of a certificate or registration with the board.

16.2(5) Fraud, deceit, or deception, through act or omission, in connection with an application for certification or registration under Iowa Code chapter 543D, including the submission to the board of false information or documents, or the failure to disclose material information in connection with such an application for certification or registration.

16.2(6) Assisting a certified real estate appraiser in the development or reporting of an appraisal assignment that is required by Iowa Code chapter 543D, or by federal or state law, rule, or policy to be performed by a certified real estate appraiser, unless the person assisting the certified real estate appraiser meets one or more of the following conditions:

- a. The person is certified under this chapter.
- b. The person is registered as an associate real estate appraiser and is acting under the direct supervision of a certified real estate appraiser.
- c. The person is solely providing administrative services, such as taking photographs, preparing charts, or typing reports, and is not providing real estate appraisal assistance in developing the analysis, valuation, opinions, or conclusions associated with the appraisal assignment.
- d. The person is providing professional consultation that does not constitute real property appraisal assistance, such as the assistance of a professional engineer or certified public accountant.

16.2(7) Improperly influencing or attempting to improperly influence the development, reporting, result, or review of a real estate appraisal as provided in 2007 Iowa Acts, Senate File 137, section 7.

193F—16.3(543D) Investigations. The board is authorized by Iowa Code subsection 17A.13(1) and 2007 Iowa Acts, Senate File 137, section 7, to conduct such investigations as are needed to determine whether grounds exist to make application to the district court pursuant to 2007 Iowa Acts, Senate File 137, section 7, or to impose civil penalties against a person who is not certified or registered with the board. Such investigations shall conform to the procedures outlined in 193—Chapter 6 and 193F—Chapter 8. The board is authorized to issue subpoenas and to compel the testimony of witnesses in connection with such investigations, pursuant to 2007 Iowa Acts, Senate File 137, section

7. Complaint and investigatory files solely concerning persons who are not certified or registered by the board are not confidential except as provided in Iowa Code chapter 22.

193F—16.4(543D) Notice of intent to impose civil penalties.

16.4(1) The notice of the board's intent to issue an order to require compliance with 2007 Iowa Acts, Senate File 137, section 7, and to impose a civil penalty shall be served upon the nonlicensee by restricted certified mail, return receipt requested, or by personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the nonlicensee may accept service personally or through authorized counsel.

16.4(2) The notice shall include the following:

- a. A statement of the legal authority and jurisdiction under which the proposed civil penalty would be imposed.
- b. Reference to the particular sections of the statutes and rules involved.
- c. A short, plain statement of the alleged unlawful practices.
- d. The dollar amount of the proposed civil penalty and the nature of the intended order to require compliance with 2007 Iowa Acts, Senate File 137, section 7.
- e. Notice of the nonlicensee's right to a hearing and the time frame in which hearing must be requested.
- f. The address to which written request for hearing must be made.

193F—16.5(543D) Request for hearing.

16.5(1) Nonlicensees must request a hearing within 30 days of the date the notice is received or service is accepted. 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 delivery to the board office.

16.5(2) If a request for hearing is not timely made, as described in the notice, the board chairperson or the chairperson's designee may issue an order imposing a civil penalty and requiring compliance with Iowa Code chapter 543D. The order may be mailed by regular first-class mail or served in the same manner as the notice of intent to impose a civil penalty.

16.5(3) If a request for hearing is timely made, the board shall issue a notice of hearing and conduct a hearing in the same manner as applicable to disciplinary cases against licensees. Hearings involving nonlicensees are open to the public.

16.5(4) A nonlicensee 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 543D at any stage of the proceeding upon mutual consent of the board.

16.5(5) 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 rule 193—7.30(17A,272C).

193F—16.6(543D) Factors to consider. Among the factors the board may consider when determining the amount of civil penalty to impose, if any, are the following:

1. The time elapsed since the unlawful practice occurred.
2. Evidence of reform or remedial actions.
3. Whether the violation is a repeat offense following a prior warning letter or other notice of the nature of the infraction.
4. Whether the violation involved an element of deception.
5. Whether the unlawful practice violated a prior order of the board, court order, cease and desist agreement, consent order, or similar document.
6. The clarity of the issue involved.
7. Whether the violation was willful and intentional.
8. Whether the nonlicensee acted in bad faith.
9. The extent to which the nonlicensee cooperated with the board.
10. The circumstances leading to the violation.

11. Whether the amount imposed will be a substantial economic deterrent to the violation.
12. The economic benefits gained by the nonlicensee as a result of the violation.
13. The severity of the violation and the risk of harm to the public.
14. The interest of the public.

193F—16.7(543D) Enforcement options. In addition or as an alternative to the administrative process described in these rules, the board may seek an injunction in district court, refer the matter for criminal prosecution, enter into a consent order, issue an informal cautionary letter, refer the matter to the attorney general, or refer the matter to the licensing entity with regulatory authority over the nonlicensee and jurisdiction to take action against the person's real estate-related license as provided in 2007 Iowa Acts, Senate File 137, section 7.

These rules are intended to implement Iowa Code chapter 17A and chapter 543D as amended by 2007 Iowa Acts, Senate File 137.

[Filed 7/13/07, Notice 5/23/07—published 8/1/07, effective 9/5/07]