

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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