

CHAPTER 2011
BROKERAGE AGREEMENTS AND LISTINGS

[Prior to 9/4/02, see 193E—Ch 1]

[Prior to 6/10/26, see Real Estate Commission[193E] Ch 11]

Chapter rescission date pursuant to Iowa Code section 17A.7: 5/22/29

481—2011.1(543B) Brokerage agreements. All brokerage agreements will be in writing, including the amount of compensation to be paid with disclosure that states compensation is negotiable and not set by law, the signatures of all parties concerned and a definite expiration date not to exceed one calendar year in length from the effective date, for residential properties. An exclusive brokerage agreement or exclusive right to sell agreement clearly indicates that it is such an agreement. A legible copy of every written brokerage agreement or other written authorization is given to the client by a licensee as soon as the signature of the client is obtained.

1. A listing agreement should properly identify the property and contain the terms and conditions under which the property is to be sold, including but not limited to the list price and any compensation to be earned from the sale of the property.

2. A buyer representation agreement is required for all residential properties. Open houses, auctions, and commercial properties are exempt from usage of a buyer representation agreement.

2011.1(1) A licensee cannot solicit or enter into a brokerage agreement with a buyer or seller if the licensee knows or has reason to know that the buyer or seller has a written unexpired exclusive brokerage agreement or exclusive right to sell listing agreement to the property with another broker unless the buyer or seller initiates the discussion and the licensee has not directly or indirectly solicited the brokerage agreement.

a. However, if the buyer or seller initiates the discussion, the licensee may negotiate and enter into a brokerage agreement that will take effect after the expiration of the current brokerage agreement.

b. If the buyer or seller initiates the discussion, the licensee may inform the buyer or seller that the buyer or seller needs to allow the current brokerage agreement to expire or obtain a mutually acceptable cancellation from the broker before any further discussion can take place.

2011.1(2) A real estate licensee cannot negotiate a sale, exchange, or lease of real property directly with a seller if it is known that the seller has a written unexpired contract in connection with the property that grants an exclusive right to sell to another broker.

2011.1(3) A real estate licensee cannot negotiate a sale, purchase, exchange, or lease of real property directly with a buyer or seller if it is known that the buyer or seller has a written unexpired exclusive brokerage agreement with another broker.

2011.1(4) All brokerage agreements are 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 cannot solicit, 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.

2011.1(5) Net listing barred. No licensee makes or enters 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 compensation. The taking of a net listing is unprofessional conduct and constitutes a violation of Iowa Code sections 543B.29(3) and 543B.34(8).

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481—2011.2(543B) Cooperation, compensation, and compliance.

2011.2(1) Every written brokerage agreement includes, at a minimum, the criteria set forth in Iowa Code section 543B.56A and the following provisions:

a. Brokerage agreements will contain a statement disclosing the brokerage policy on cooperating with and compensating other brokerages or the other parties' agent in the sale, lease, rental, or purchase of real estate, including whether the brokerage intends to split the compensation with other brokerages and any other method for negotiating compensation for another party's broker. Such disclosure serves to inform the client of any policy that would limit the participation of any other brokerage; and

b. All brokerage agreements comply with Iowa real estate law and commission rules, including but not limited to rules 481—2011.1(543B) and 481—2011.4(543B) and 481—Chapter 2015.

2011.2(2) Duration of relationship. The relationships commence at the time of the brokerage agreement and 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 and not exceeding 12 months. 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 ends at the earlier of the following:

a. The date of expiration agreed upon by the parties; or

b. Any termination by written agreement of the parties.

2011.2(3) 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, or dual agent and affiliated licensees 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.

2011.2(4) 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 splitting of compensation between brokers.

a. Payment of compensation is not to 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 needed as follows:

(1) A seller's or landlord's agent may split 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 split 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 cannot propose to the buyer's or tenant's agent that such seller's or landlord's agent may be compensated by splitting compensation paid by such buyer or tenant.

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

c. A broker may be compensated by more than one party for services in a transaction.

d. A licensee cannot accept, receive or charge an undisclosed compensation for a transaction.

e. A licensee cannot give or pay an undisclosed compensation 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 cannot pay any undisclosed rebate to any party to a transaction.

g. A licensee cannot give any undisclosed credit against compensation due from a client or licensee to any party to a transaction.

h. A licensee cannot 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.

k. The seller or landlord may authorize a portion of the proceeds of the sale of real property or other negotiated term of an agreement or contract to pay compensation to other brokers who are part of the same real estate transaction as the seller or landlord, including a buyer's or tenant's broker solely representing the buyer or tenant. The payment of compensation may be a direct payment from the seller or landlord to the other brokers who are part of the same real estate transaction as the seller or landlord, including a buyer's or tenant's broker solely representing the buyer or tenant.

2011.2(5) Any compensation 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 compensation or fee, no licensee other than a party to that brokerage agreement attempts to alter, modify, or change or induce another person to alter, modify, or change a compensation or fee that has previously been agreed upon without the prior written consent of the parties to that brokerage agreement.

2011.2(6) The seller or landlord may, in the 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.

2011.2(7) Nothing contained in this rule shall obligate any buyer or tenant or seller or landlord to pay compensation to a licensee representing the buyer or tenant or seller or landlord in a real estate transaction unless the buyer or tenant or seller or landlord has entered into a written brokerage agreement with the broker specifying the compensation terms and conditions, in accordance with Iowa real estate license law and commission rules.

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481—2011.3(543B) Terms or conditions. A licensee cannot 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 is responsible to ensure that all preprinted documents and forms used follow these rules.

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481—2011.4(543B) Distribution of executed instruments. Upon execution of any instrument in connection with a real estate transaction, a licensee, as soon as practicable, delivers a legible copy of the original instrument to each of the parties thereto. It is the responsibility of the licensee to prepare sufficient copies of such instruments to satisfy this criteria. The broker retains copies for five years.

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481—2011.5(543B) Enforcing a protective clause. To enforce a protective clause beyond the expiration of an exclusive brokerage agreement, there must be a provision for the protective clause in the brokerage agreement that establishes a definite protection period. In writing and prior to the expiration of the brokerage agreement, the broker furnishes to the party the names and available contact information of persons to whom the property was presented or a list of each property that was shown during the active term of the brokerage agreement and for whom protection is sought. Delivery is by personal or electronic service with written acknowledgment of receipt, or by regular mail or certified mail postmarked prior to the expiration of the brokerage agreement, return receipt requested.

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481—2011.6(543B) Rebates and inducements.

2011.6(1) A licensee cannot pay compensation, any part of compensation, or valuable consideration to an unlicensed third party for performing brokerage functions or engaging in any activity that needs 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 needs a real estate license, are barred.

2011.6(2) In a brokerage agreement, the broker is principal party to the contract. The broker may, with proper disclosure, pay a portion of the compensation earned to an unlicensed seller, landlord, buyer, or tenant that is a principal party to the brokerage agreement. This will be deemed a reduction in the amount of the earned compensation.

2011.6(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 criteria of rule 481—2011.3(543B) do not apply as long as any client relationship has terminated.

2011.6(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 criteria of rule 481—2011.3(543B) do not apply as long as no client relationship has been established with the buyer or lessee.

2011.6(5) The offering by a licensee of a free gift, prize, money, or other valuable consideration as an inducement is free from deception and does not serve to distort the true value of the real estate service being promoted.

2011.6(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 limitations 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 need 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 necessary disclosures are made.

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481—2011.7(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 makes 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 obligated by paragraph 2011.3(6) "d." Written disclosure is necessary regardless of the type of representation provided by the licensee or if the licensee provides no representation.

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

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