

191—100.40(523A) Prohibited practices for preneed sellers and sales agents.

100.40(1) The commissioner may impose sanctions as set forth in Iowa Code section 523A.807 and rules 191—100.40(523A) and 191—100.41(523A), or place a license in restricted status, if the commissioner finds that a preneed seller, sales agent, or owner, partner, member, director, shareholder or manager of a licensed business entity has violated or failed to comply with Iowa Code chapter 523A, this chapter, or any associated rules or implementing orders, or is otherwise unable to conduct activities as a preneed seller or sales agent.

100.40(2) Grounds for discipline include but are not limited to the following acts or practices:

a. Fraudulent or deceptive practices. Engaging in any act or practice that violates Iowa Code section 523A.701, 523A.702 or 523A.703, whether or not actual harm or injury occurs, including but not limited to:

- (1) Falsifying business records; or
- (2) Misappropriating funds.

b. Responsibility for sales activities of others. A preneed seller's consent or acquiescence to violation of this chapter or Iowa Code chapter 523A by any person acting on the preneed seller's behalf.

c. Law violations.

(1) Violating any state or federal law applicable to the conduct of the applicant's or licensee's business including, but not limited to, the following:

1. The provisions of Iowa Code chapter 156 pertaining to the licensure of funeral directors in the state of Iowa;

2. Regulations promulgated by the Federal Trade Commission relating to merchandise or services, or funeral or cremation establishments;

3. Applicable tax or public health laws, ordinances or regulations; or

4. Laws, rules, ordinances, or regulations occurring outside of Iowa if the commissioner determines that such violation may adversely implicate the licensee's or applicant's compliance with Iowa laws, rules, orders, ordinances, or regulations.

(2) Conviction of a criminal offense, in any jurisdiction, involving dishonesty or a false statement, including but not limited to fraud, theft, misappropriation of funds, falsification of documents, deceptive acts or practices, or other related offenses. "Conviction" shall include a plea of guilty or a finding of guilt and shall include a deferred judgment.

d. Sales prohibited by order. The sale of merchandise or services by a preneed seller or sales agent who has been prohibited from selling services or merchandise in an order issued pursuant to Iowa Code section 523A.807(3).

e. Returned checks or declined credit transactions. Submitting to the commissioner an electronic payment which is returned to the commissioner by a bank without payment, or submitting a payment to the commissioner by credit card which the credit card company does not approve, or canceling or refusing amounts charged to a credit card by the commissioner.

f. Failure to maintain records. Failure to maintain records as required by Iowa Code chapter 523A or any associated rules or orders.

g. Failure to cooperate with an examination or investigation. Failure to submit to an examination, failure to comply with a reasonable written request of an examiner, or failure to cooperate with an investigation conducted by the commissioner as required by Iowa Code sections 523A.206, 523A.803, 523A.808 and 523A.811 and any associated rules or orders.

h. Insolvency or unsound financial condition. Being or becoming insolvent or of unsound financial condition, the determination of which shall be based on but not limited to the following factors:

- (1) The licensee's or license applicant's net worth;
- (2) Whether a financial institution has closed or otherwise taken adverse action against an account held by or on behalf of the licensee or license applicant;
- (3) The licensee or license applicant has exhibited a pattern of writing bad checks or otherwise overdrawing a business or trust account as a result of insufficient funds;
- (4) Untimely payment by the licensee or license applicant of business obligations in a manner that threatens the operation of the business;

- (5) Untimely placement by the licensee of consumer funds into trust;
- (6) Failure of the licensee or license applicant to pay sales tax, unemployment tax or other tax owed in the course of business; or
- (7) Any other act, practice or omission that provides a reasonable basis to question the ability of the licensee or license applicant to comply with the requirements of Iowa Code chapter 523A and related regulations.

i. Inability to perform.

(1) Inability to provide the merchandise or services which the licensee purports to sell, including but not limited to failing to employ or have a contractual arrangement with at least one person who is licensed to perform mortuary science services, as described in Iowa Code chapter 156, if such services are included in a purchase agreement.

(2) Inability to reasonably provide merchandise or services due to an impairment, drug or alcohol addiction, or other act, conduct or condition. A licensee who has had a physical or mental impairment or illness during the license period may request to be placed on restricted status by the commissioner. Any such request shall be submitted on a form as specified by the commissioner and must include a signed statement of a licensed health care professional which attests to the existence of a disability or illness during the license period.

j. Suspension for failure to pay child support.

(1) Upon receipt of a certificate of noncompliance from the child support recovery unit (CSRU), the commissioner shall issue a notice to the sales agent that the sales agent's pending application for licensure, pending request for renewal, or current license will be suspended 30 days after the date of the notice. Notice shall be sent by regular mail to the sales agent's last-known address.

(2) The notice shall contain the following items:

1. A statement that the commissioner intends to suspend the sales agent's application, request for renewal or current license in 30 days;
2. A statement that the sales agent must contact the CSRU to request a withdrawal of the certificate of noncompliance;
3. A statement that the sales agent's application, request for renewal or current license will be suspended if the certificate of noncompliance is not withdrawn;
4. A statement that the sales agent does not have a right to a hearing before the commissioner, but that the sales agent may file an application for a hearing in district court pursuant to Iowa Code section 252J.9;
5. A statement that the filing of an application with the district court will stay the proceedings of the commissioner; and
6. A copy of the certificate of noncompliance.

(3) The filing of an application for hearing with the district court will stay all suspension proceedings until the commissioner is notified by the district court of the resolution of the application.

(4) If the commissioner does not receive a withdrawal of the certificate of noncompliance from the CSRU or a notice from a clerk of court that an application for hearing has been filed, the commissioner shall suspend the sales agent's application, request for renewal or current license 30 days after the notice is issued.

(5) Upon receipt of a withdrawal of the certificate of noncompliance from the CSRU, suspension proceedings shall halt, and the named sales agent shall be notified that the proceedings have been halted. If the sales agent's license has already been suspended, the license shall be reinstated if the sales agent is otherwise in compliance with rules issued by the commissioner. All fees required for license renewal or license reinstatement must be paid by sales agents, and all continuing education requirements must be met before a sales agent license will be renewed or reinstated after a license suspension or revocation pursuant to this paragraph.

k. Suspension for failure to pay student loan. Rescinded IAB 1/1/20, effective 2/5/20.

l. Suspension for failure to pay state debt.

(1) The commissioner shall deny the issuance or renewal of a sales agent license upon receipt of a certificate of noncompliance from the centralized collection unit of the department of revenue according

to the procedures in Iowa Code chapter 272D. In addition to the procedures set forth in Iowa Code chapter 272D, this subrule shall apply.

(2) Upon receipt of a certificate of noncompliance from the centralized collection unit of the department of revenue according to the procedures set forth in Iowa Code chapter 272D, the commissioner shall issue a notice to the sales agent that the sales agent's pending application for licensure, pending request for renewal, or current sales agent license will be suspended 60 days after the date of the notice. Notice shall be sent to the sales agent's last-known address by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. Alternatively, the applicant or licensed sales agent may accept service personally or through authorized counsel.

(3) The notice shall contain the following items:

1. A statement that the commissioner intends to suspend the sales agent's application, request for renewal or current sales agent license in 60 days;

2. A statement that the sales agent must contact the centralized collection unit of the department of revenue to schedule a conference or to otherwise obtain a withdrawal of the certificate of noncompliance;

3. A statement that the sales agent's application, request for renewal or current sales agent license will be denied or suspended if the commissioner does not receive a withdrawal of the certificate of noncompliance from the centralized collection unit of the department of revenue within 60 days of the issuance of notice under this rule; or, if the current sales agent license is on suspension, a statement that the sales agent's current sales agent license will be revoked;

4. A statement that the sales agent does not have a right to a hearing before the commissioner, but that the sales agent may file an application for a hearing in district court pursuant to Iowa Code section 272D.9;

5. A statement that the filing of an application with the district court will stay the proceedings of the commissioner; and

6. A copy of the certificate of noncompliance.

(4) Sales agents shall keep the commissioner informed of all court actions and all actions taken by the centralized collection unit of the department of revenue, and sales agents shall provide to the commissioner, within seven days of filing or issuance, copies of all applications filed with the district court pursuant to all court orders entered in such actions and copies of all withdrawals of certificates of noncompliance by the centralized collection unit of the department of revenue.

(5) The effective date of revocation or suspension of a sales agent license shall be 60 days following service of the notice upon the applicant or sales agent.

(6) In the event an applicant or licensed sales agent timely files a district court action following service of a notice by the commissioner, the commissioner's suspension proceedings will be stayed until the commissioner is notified by the district court of the resolution of the application. Upon receipt of a court order lifting the stay, or otherwise directing the commissioner to proceed, the commissioner shall continue with the intended action described in the notice. For purposes of determining the effective date of the denial of the issuance or renewal of a sales agent license, the commissioner shall count the number of days before the action was filed and the number of days after the court disposed of the action.

(7) If the commissioner does not receive a withdrawal of the certificate of noncompliance from the centralized collection unit of the department of revenue or a notice from a clerk of court that an application for hearing has been filed, the commissioner shall suspend the sales agent's application, request for renewal or current sales agent license 60 days after the notice is issued.

(8) Upon receipt of a withdrawal of the certificate of noncompliance from the centralized collection unit of the department of revenue, suspension proceedings shall halt, and the named sales agent shall be notified that the proceedings have been halted. If the sales agent's license has already been suspended, the license shall be reinstated if the sales agent is otherwise in compliance with this chapter. All fees required for license renewal or license reinstatement must be paid by the sales agent, and all continuing education requirements must be met before a sales agent license will be renewed or reinstated after a license suspension or revocation pursuant to Iowa Code chapter 272D.

(9) The commissioner shall notify the sales agent in writing through regular first-class mail, or such other means as the commissioner deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a sales agent license, and shall similarly notify the sales agent when the sales agent license is reinstated following the commissioner's receipt of a withdrawal of the certificate of noncompliance.

(10) Notwithstanding any statutory confidentiality provision, the commissioner may share information with the centralized collection unit of the department of revenue for the sole purpose of identifying sales agents subject to enforcement under Iowa Code chapter 272D.
[ARC 2258C, IAB 11/25/15, effective 12/30/15; ARC 4848C, IAB 1/1/20, effective 2/5/20]