

193E—11.2(543B) Cooperation, compensation, and compliance.

11.2(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 193E—11.1(543B) and 193E—11.4(543B) and 193E—Chapter 15.

11.2(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.

11.2(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.

11.2(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.

11.2(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.

11.2(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.

11.2(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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