193E—12.5(543B) Disclosed dual agent.

12.5(1) A brokerage which has a company policy that permits disclosed dual agency for in-house transactions provides a disclosed dual agency consent agreement to the client or prospective client prior to engaging in any activities of a dual agent. If any seller, landlord, buyer, or tenant rejects dual agency, or refuses to sign consent to dual agency, the licensee cannot act as a dual agent. The dual agency consent agreement complies with Iowa law and commission rules including, but not limited to, the criteria to inform the prospective clients that they are not obligated to consent to dual agency representation as provided by subrule 12.5(2).

a. A licensee may act as a dual agent only with the informed consent of all parties to the transaction. The informed consent is evidenced by a written agreement pursuant to Iowa law and commission rules.

b. A dual agent is an agent for both the seller and buyer or the landlord and tenant and has the duties and obligations needed for a single agent representing a seller or landlord and for a single agent representing a buyer or tenant, unless otherwise provided for in this rule.

c. A dual agent discloses to the client all material adverse facts concerning the property that are actually known by the licensee, pursuant to Iowa Code section 543B.56.

d. A dual agent cannot disclose to one client confidential information about the other client and preserves a seller's or a landlord's, or a buyer's or a tenant's, confidential information as defined in rule 193E—2.1(543B), unless disclosure is mandated by law, or failure to disclose such information would constitute fraud or dishonest dealing, or disclosure is authorized by express instruction. A dual agent does not terminate the dual agency relationship by making the disclosures mandatory or permitted by the dual agency consent agreement. Confidential information includes the same information as 193E—subrule 12.3(1) or 12.4(1).

e. In any transaction, a licensee may withdraw from representing a client who has not consented to a disclosed dual agency at any time prior to the existence of the dual agency, which is prior to discussing any seller's or landlord's property with a potential buyer or tenant and prior to discussing any potential buyer or tenant with a seller or landlord, when both the seller or landlord and the buyer or tenant are represented by and are clients of the licensee.

(1) All withdrawals are made in writing and acknowledged by the separate signatures of the clients.

(2) Such withdrawal does not prejudice the ability of the licensee to continue to represent the other client in the transaction or limit the licensee from representing the client in other transactions not involving a dual agency.

12.5(2) A dual agency consent agreement:

a. Fairly and accurately describes the type of representation the licensee will provide each client;

b. Contains a statement of the licensee's duties under Iowa Code section 543B.56(1);

c. Contains a statement of the licensee's duties under Iowa Code section 543B.56(2);

d. Informs the clients that representing more than one party to a transaction may present a conflict of interest;

e. Informs the clients that they are not obligated to consent to dual agency;

f. Provides additional information that the licensee determines is necessary to clarify the licensee's relationship with each client, including any changes from prior types of representation;

g. Describes the confidential information a dual agent will not disclose to one client about the other client; and

h. Includes a statement that the clients understand the licensee's duties and consent to the licensee's providing brokerage services to more than one client.

12.5(3) No particular disclosure language is needed. The commission recommends use of the following sample language to satisfy the mandatory disclosure regarding conflict of interest:

Representing more than one party to a transaction can create a conflict of interest since both clients may rely upon the broker's advice and the clients' respective interests may be adverse to each other. Broker will endeavor to be impartial between seller and buyer and will not represent the interest of either the seller or buyer to the exclusion or detriment of the other.

12.5(4) Potential dual agency agreement. A brokerage which has a company policy that permits disclosed dual agency for in-house transactions and that elects to use a potential dual agency agreement

provides the agreement to the client or prospective client prior to engaging in any activities of a dual agent. Such consent agreement complies with Iowa law and commission rules.

a. The potential dual agency agreement should be provided to the seller or landlord prior to entering into a listing agreement or a contract for seller or landlord brokerage services.

b. The potential dual agency agreement should be provided to the buyer or tenant prior to entering into a buyer or tenant agreement .

c. If the parties to a proposed transaction or contract have agreed in writing to potential dual agency, a dual agency consent disclosure is presented to the buyer or tenant prior to the buyer's or tenant's signing an offer to purchase or a rental or lease agreement. The buyer or tenant may accept or reject dual agency at this point in the transaction.

d. If the parties to a proposed transaction or contract have agreed in writing to potential dual agency, a dual agency consent disclosure is presented to the seller or landlord prior to the seller's or landlord's signing or accepting an offer to purchase or a rental or lease agreement. The seller or landlord may accept or reject dual agency at this point in the transaction.

e. If the parties to a proposed transaction or contract have agreed in writing to potential dual agency, the obligated subsequent dual agency consent disclosure is property-specific and complies with Iowa law and commission rules.

[**ARC 7774C**, IAB 4/17/24, effective 5/22/24; **ARC 9478C**, IAB 8/6/25, effective 9/10/25]