

193E—18.14(272C,543B) Disciplinary sanctions.

18.14(1) *Type of sanctions.* The commission has authority to impose, alone or in combination, the following disciplinary sanctions:

- a. Revocation of a license.
- b. Suspension of a license for a period of time or indefinitely.
- c. Nonrenewal of a license.
- d. Prohibit permanently, until further order of the commission, or for a specified period of time, the engagement in specified procedures, methods or acts.
- e. Probation. As a condition to a period of probation, the commission may impose terms and conditions deemed appropriate by the commission including, but not limited to, substance abuse evaluation and such care and treatment as recommended in the evaluation or otherwise appropriate under the circumstances.
- f. Require additional continuing education. The commission may specify that a designated amount of continuing education be taken in specific subjects and may specify the time period for completing these courses. The commission may also specify whether this continuing education be in addition to the continuing education routinely required for license renewal. The commission may also specify that additional continuing education be a condition for the termination of any suspension or reinstatement of a license.
- g. Require reexamination.
- h. Impose a monitoring or supervision arrangement.
- i. Downgrade a license from a broker license to a salesperson license.
- j. Issue a reprimand.
- k. Order a physical or mental examination with periodic reports to the commission, if deemed necessary.
- l. Impose civil penalties, the amount of which shall be at the discretion of the commission, but which shall not exceed \$2,500 per violation. Civil penalties may be imposed for any of the disciplinary violations specified in rule 193E—18.2(17A,272C,543B) and as listed in 18.14(5).

18.14(2) *Imposing discipline.* Discipline may only be imposed against a licensee by the affirmative vote of a majority of the members of the commission who are not disqualified. When determining the nature and severity of the sanction to be imposed against a particular licensee or groups of licensees, the commission may consider the following factors:

- a. The relative seriousness of the violation as it relates to assuring the citizens of this state professional competency.
- b. The facts of the particular violation.
- c. Number of prior violations.
- d. Seriousness of prior violations.
- e. Whether remedial action has been taken.
- f. The impact of the particular activity upon the public.
- g. Such other factors as may reflect upon the competency, ethical standards and professional conduct of the licensee, including those listed in 18.14(6).

18.14(3) *Voluntary surrender.* The commission may accept the voluntary surrender of a license to resolve a pending disciplinary contested case or pending disciplinary investigation. The commission shall not accept a voluntary surrender of a license to resolve a pending disciplinary investigation unless a statement of charges is filed along with the order accepting the voluntary surrender. Such a voluntary surrender is considered disciplinary action and shall be published in the same manner as is applicable to any other form of disciplinary order.

18.14(4) *Notification requirements.* Whenever a broker's license is revoked, suspended, restricted, or voluntarily surrendered under this chapter, the licensee shall follow the procedures set forth in rule 193E—7.3(543B). Strict compliance with these procedures shall be a condition for an application for reinstatement. Whenever a salesperson's or broker associate's license is revoked, suspended, restricted, or voluntarily surrendered under this chapter, the licensee shall immediately notify the licensee's broker, and shall:

a. Within 7 days of receipt of the commission's final order, notify in writing all clients of the fact that the license has been revoked, suspended, restricted, or voluntarily surrendered. Such notice shall advise the client to immediately contact the broker, unless the restriction at issue would not impact the real estate services provided for that client.

b. Within 30 days of receipt of the commission's final order, the licensee shall file with the commission copies of the notices sent pursuant to 18.14(4) "a." Compliance with this requirement shall be a condition for an application for reinstatement.

18.14(5) *Violations for which civil penalties may be imposed.* The following is a nonexclusive list of violations upon which civil penalties may be imposed:

- a.* Engaging in activities requiring a license when license is inactive.
- b.* Failing to maintain a place of business.
- c.* Improper care and custody of license:
 - (1) Failing to properly display license(s).
 - (2) Failing to return license in a timely manner (received within 72 hours as provided by 193E—subrules 6.1(1) and 6.1(2)).
 - (3) Failing to notify associate when license is returned.
 - (4) Failing to provide mailing address of associate when license is returned.
- d.* Failing to inform commission and remit required fees if appropriate:
 - (1) When changing business address (5 working days).
 - (2) When changing status (5 working days).
 - (3) When changing form of firm (5 working days).
 - (4) When opening a trust account by not filing a consent to examine for the account.
 - (5) When changing residence address or mailing address (5 working days).
 - (6) When independently obtained errors and omissions insurance status, coverage or provider changes (5 working days).
- e.* Maintaining inadequate transaction records such as:
 - (1) Failing to maintain a general ledger.
 - (2) Failing to maintain individual account ledgers.
 - (3) Failing to retain records on file.
- f.* Improper trust account and closing procedures:
 - (1) Failing to deposit funds as required.
 - (2) Disbursing trust funds prior to closing without written authorization.
 - (3) Withholding earnest money unlawfully when the transaction fails to consummate.
 - (4) Failing to obtain escrow agreement for undisbursed funds.
 - (5) Failing to remit and account for interest on closing statements.
 - (6) Computing closing statements improperly.
 - (7) Failing to provide closing statements.
 - (8) Retaining excess personal funds in the trust account.
 - (9) Failing as a salesperson or broker associate to immediately turn funds over to the broker.
 - (10) Failing to deposit trust funds in interest-bearing account in accordance with Iowa Code section 543B.46.
 - (11) Failing to account for and remit to the state accrued interest due in accordance with Iowa Code section 543B.46.
- g.* Failing to immediately present offer.
- h.* Advertising without identifying broker or clearly indicating advertisement is by a licensee.
- i.* Failing to provide information to the commission when requested relative to a complaint (14 calendar days).
- j.* Failing to obtain all signatures required on contracts or to obtain signatures or initials of all parties to changes in a contract.
- k.* Placing a sign on property without consent, or failure to remove a sign when requested.
- l.* Failing to furnish a progress report when requested.
- m.* Failing by a broker to supervise salespersons or broker associates.

- n.* Failing by a broker associate or salesperson to keep the employing broker informed.
- o.* Issuing an insufficient funds check to the commission for any reason or to anyone else in the individual's capacity as a real estate licensee.
- p.* Issuing an insufficient funds check on the broker's trust account.
- q.* Engaging in conduct which constitutes a prohibited practice or tying arrangement as prohibited by these rules.
- r.* Failing to inform clients of real estate brokerage firm of the date the firm will cease to be in business and the effect upon sellers' listing agreements.
- s.* Violating any of the remaining provisions in 193E—Chapters 1 to 20 inclusive, which have not heretofore been specified in this rule.

18.14(6) *Amount of civil penalties.* Factors the commission may consider when determining whether to assess and the amount of civil penalties include:

- a.* Whether other forms of discipline are being imposed for the same violation.
- b.* Whether the amount imposed will be a substantial deterrent to the violation.
- c.* The circumstances leading to the violation.
- d.* The severity of the violation and the risk of harm to the public.
- e.* The economic benefits gained by the licensee as a result of the violation.
- f.* The interest of the public.
- g.* Evidence of reform or remedial action.
- h.* Time elapsed since the violation occurred.
- i.* Whether the violation is a repeat offense following a prior cautionary letter, disciplinary order, or other notice of the nature of the infraction.
- j.* The clarity of the issues involved.
- k.* Whether the violation was willful and intentional.
- l.* Whether the licensee acted in bad faith.
- m.* The extent to which the licensee cooperated with the commission.
- n.* Whether the licensee with a lapsed, inactive, suspended, restricted or revoked license improperly engaged in practices which require licensure.