

193E—12.2(543B) Disclosure of agency.

12.2(1) A licensee shall not represent any party or parties to a real estate transaction or otherwise act as a real estate broker or salesperson unless that licensee makes disclosure to all required parties to the transaction identifying which party or parties, if any, that licensee represents in the transaction. Disclosure pursuant to this rule shall be made by the licensee at the time the licensee provides specific assistance to the client or nonrepresented customer.

12.2(2) Verbal disclosure required. The disclosure required by 12.2(1) must be made verbally by the licensee prior to the licensee's providing specific assistance to the client or nonrepresented customer. A change in the licensee's representation that makes the initial verbal disclosure incomplete, misleading, or inaccurate shall require that a new verbal disclosure be made immediately.

12.2(3) Written disclosure required. The written disclosure required by 12.2(1) must be made by the licensee to all parties to a real estate transaction identifying which party the licensee represents in the transaction.

a. The written disclosure is required to be made to the buyer or tenant prior to any offer, lease, or rental agreement being made or signed by the buyer or tenant, and prior to any offer, lease, or rental agreement being signed or accepted by the seller or landlord.

b. The written disclosure shall be acknowledged by separate signatures of all parties to the transaction. A change in the licensee's representation that makes the initial written disclosure incomplete, misleading, or inaccurate shall require that a new verbal disclosure be made which must be followed by a new written disclosure signed by all parties to the transaction as soon as practical.

12.2(4) A licensee representing a buyer or tenant shall inform the listing broker, the listing agent, or the seller or landlord, either verbally or in writing, of the agency relationship before any previewing, showing or negotiations are initiated, whichever comes first. If the property is not listed, the required disclosure shall be made to the unrepresented seller or landlord.

12.2(5) The seller or landlord may, in the listing or 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.

12.2(6) Nothing contained in this rule shall obligate any buyer or tenant or seller or landlord to pay compensation to a licensee unless the buyer or tenant or seller or landlord has entered into a written listing or brokerage agreement with the broker specifying the compensation terms and conditions, in accordance with Iowa real estate license law and commission rules.

12.2(7) The obligation of either the seller or landlord or buyer or tenant to pay compensation to a broker does not establish an agency relationship or affect any agency relationship.

12.2(8) Nothing contained in this rule shall prohibit a party from entering into a written listing or brokerage agreement with a broker which contains duties, obligations, and responsibilities that are in addition to those specified in Iowa real estate license law and commission rules.

12.2(9) A licensee may not be the agent for both the buyer or tenant and the seller or landlord without obtaining the written consent of both the buyer or tenant and the seller or landlord.

12.2(10) A licensee may work with and establish different types of agency relationships with the same client, in separate transactions. Examples of different agency relationships with the same client in separate transactions include, but are not limited to, the following:

a. A common example includes a licensee acting as a listing or seller's agent selling a property in one transaction and also working with and representing this same person in another transaction as a buyer's agent in the purchase of a different property.

b. A licensee may act as a dual agent in either of the separate transactions, or both, with the written permission of the parties to the specific transaction and if the broker or brokerage has a written company policy that includes disclosed dual agency for in-house transactions or same agent transactions.

c. Regardless of the type of agency relationship provided in each transaction, the licensee shall comply with the requirements of Iowa Code chapter 543B and this rule in establishing the relationships for each separate transaction.

12.2(11) An agency relationship disclosure is not required when the licensee is acting solely as a principal and not as an agent for another or when a written communication from the licensee is a solicitation of business.

12.2(12) If the seller, landlord, buyer, or tenant rejects representation, or refuses to sign the agency disclosure document, or refuses to sign acknowledging receipt of the disclosure, the licensee shall note that fact and include the date, place, time, and the names of others in attendance on a copy of the agency disclosure document and obtain other documentation establishing delivery of the disclosure and maintain the written documentation, including but not limited to copies of facsimile, restricted delivery certified mail, and other communications, in the transaction file.

12.2(13) A licensee who is offering real estate brokerage services as an auctioneer shall make the written disclosure to the buyer and obtain the acknowledgment of receipt required by law and rules, prior to the buyer's entering into a written purchase agreement for the property. For the purposes of this rule, the identification of the successful bidder shall constitute the first meaningful contact with a buyer when specific assistance is provided. After the first meaningful contact, the first practical opportunity to make the required disclosures to the buyer shall depend upon the circumstances. While it is not required, it is recommended that licensees disclose in all advertisements and flyers that they are licensed agents representing the seller and, prior to crying the auction, announce that they are licensed real estate agents representing the seller.

a. Disclosure under this rule applies only to the day of the auction.

b. If the licensee provides brokerage services prior to the auction, the disclosure shall be made either orally or in writing prior to or at the time of specific assistance being provided.

12.2(14) The licensee shall retain a copy of the disclosure form signed by the prospective buyer, seller, landlord or tenant, or the documentation and copies as required in 12.2(12) as follows:

a. If an offer is accepted, the signed or noted copy shall be retained by the broker in the closed transaction file for a period of five years from the date of the signature or note.

b. If the offer is not accepted, a signed and noted copy shall be retained with the rejected offer for a period of five years.

12.2(15) Failure of a licensee to comply with this rule is prima facie evidence of a violation of Iowa Code subsection 543B.34(4).

12.2(16) Failure of a licensee to act consistent with disclosure representations made pursuant to this rule is prima facie evidence of a violation of Iowa Code subsection 543B.34(4).

12.2(17) Nothing in this rule shall affect the validity of title to real property transferred based solely on the reason that any licensee failed to conform to the provisions of this rule.

12.2(18) A sole-proprietor single broker or firm shall not be required to offer or engage in more than one type of brokerage relationship as enumerated in rules 193E—12.3(543B) to 193E—12.5(543B).

12.2(19) The licensee offering brokerage services to a person as a buyer's or tenant's agent, or who is providing brokerage services to a person as a seller's or landlord's agent, shall disclose in writing to that person the type or types of brokerage relationships the broker and affiliated licensees are offering to that person before entering into a listing or brokerage agreement with that person.