

REAL ESTATE APPRAISER EXAMINING BOARD[193F]

Notice of Intended Action

Proposing rulemaking related to disciplinary actions against certified and associate appraisers and providing an opportunity for public comment

The Real Estate Appraiser Examining Board hereby proposes to adopt new Chapter 6, “Disciplinary Actions Against Certified and Associate Appraisers,” and to rescind Chapter 7, “Disciplinary Actions Against Certified and Associate Appraisers,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 543D.5.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 543D and Executive Order 10.

Purpose and Summary

Proposed Chapter 6 establishes the disciplinary actions for the protection and well-being of those persons who may rely upon registered associate appraisers or certified appraisers for the performance of real property appraisals within the state and for clients in the state. The chapter also establishes the standards of practice that govern all real property appraisal activities required by Uniform Standards of Professional Appraisal Practice (USPAP). The intended benefit of this rulemaking is to ensure the public and licensees are aware of the disciplinary grounds against licensees.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department of Inspections, Appeals, and Licensing for a waiver of the discretionary provisions, if any, pursuant to 481—Chapter 6.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Board no later than 4:30 p.m. on February 14, 2024. Comments should be directed to:

Kimberly Gleason, Board Administrator
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321
Phone: 515.725.8145
Fax: 515.725.9032
Email: kimberly.gleason@dia.iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

February 13, 2024 10:40 to 11 a.m.	6200 Park Avenue Des Moines, Iowa Video call link: meet.google.com/zuu-vunu-dcc
February 14, 2024 10:40 to 11 a.m.	6200 Park Avenue Des Moines, Iowa Video call link: meet.google.com/zuu-vunu-dcc

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Board and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Adopt the following **new** 193F—Chapter 6:

CHAPTER 6
DISCIPLINARY ACTIONS AGAINST CERTIFIED AND
ASSOCIATE APPRAISERS

193F—6.1(17A,272C,543D) Disciplinary authority. The board is empowered to regulate the real estate appraiser profession for the protection and well-being of the public trust. To perform these functions, the board is broadly vested with authority to review and investigate alleged acts or omissions of applicants and licensees and to address disciplinary concerns under Iowa law.

193F—6.2(543D) Standards of practice. All registered associate appraisers and certified real estate appraisers will comply with the USPAP edition applicable to each appraisal assignment.

193F—6.3(17A,272C,543D) Grounds for discipline. The board may initiate disciplinary action against a registered associate appraiser or a certified real estate appraiser based on any one or more of the following grounds:

6.3(1) Code violations. Any violation of an Iowa Code provision that authorizes imposition of licensee sanctions:

a. False representation of a material fact, whether by word or by conduct, by false or misleading allegation, or by concealment of that which should have been disclosed;

b. Attempting to file or filing with the board any false or forged diploma, course certificate, identification, credential, license, registration, certification, examination report, affidavit, or other record;

c. Failing or refusing to provide complete information in response to a question on an application for initial or renewal registration or certification; or

d. Otherwise participating in any form of fraud or misrepresentation by act or omission.

6.3(2) Professional incompetence. Professional incompetence includes, but is not limited to:

- a. A substantial lack of knowledge or ability to discharge professional obligations within the scope of practice.
- b. A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other practitioners in the state of Iowa acting in the same or similar circumstances.
- c. A failure to exercise the degree of care that is ordinarily exercised by the average practitioner acting in the same or similar circumstances.
- d. Failure to conform to the minimal standards of acceptable and prevailing practice of registered associate appraisers or certified real property appraisers in this state.
- e. A willful, repeated, or material deviation from USPAP standards, or other act or omission that demonstrates an inability to safely practice in a manner protective of the public's interest, including any violation of USPAP's competency rule.

6.3(3) *Deceptive practices.* Deceptive practices are grounds for discipline, whether or not actual injury is established, and include but are not limited to:

- a. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of real property appraising.
- b. Use of untruthful or improbable statements in advertisements. Use of untruthful or improbable statements in advertisements includes, but is not limited to, an action by a registrant or certificate holder in making information or intention known to the public that is false, deceptive, misleading or promoted through fraud or misrepresentation.
- c. Falsification of business records or appraisal logs through false or deceptive representations or omissions.
- d. Submission of false or misleading reports or information to the board including information supplied in an audit of continuing education, reports submitted as a condition of probation, or any reports identified in this rule.
- e. Making any false or misleading statement in support of an application for registration or certification submitted by another.
- f. Knowingly presenting as one's own a certificate or registration, certificate or registration number, or signature of another or of a fictitious registrant or certificate holder, or otherwise falsely impersonating a certified appraiser or registered associate appraiser.
- g. Representing oneself as a registered associate appraiser or certified appraiser when one's registration or certificate has been suspended, revoked, surrendered, or placed on inactive or retired status, or has lapsed.
- h. Permitting another person to use the registrant's or certificate holder's registration or certificate for any purposes.
- i. Fraud in representations as to skill or ability.
- j. Misrepresenting a specialized service as an appraisal assignment in violation of Iowa Code section 543D.18(3) or (5).

6.3(4) *Unethical, harmful or detrimental conduct.* Registrants and certificate holders engaging in unethical conduct or practices harmful or detrimental to the public may be disciplined whether or not injury is established. Behaviors and conduct that are unethical, harmful or detrimental to the public may include, but are not limited to, the following actions:

- a. Verbal or physical abuse, improper sexual contact, or making suggestive, lewd, lascivious, offensive or improper remarks or advances, if such behavior occurs within the practice of real property appraising or if such behavior otherwise provides a reasonable basis for the board to conclude that such behavior within the practice of real estate appraising would place the public at risk.
- b. Engaging in a professional conflict of interest, or otherwise violating the public trust, as provided in USPAP's ethics rule.
- c. Aiding or abetting any unlawful activity for which a civil penalty can be imposed under rule 193F—12.2(543D).

6.3(5) *Lack of proper qualifications.*

- a. Continuing to practice as a registered associate appraiser or certified real property appraiser without satisfying the continuing education for registration or certificate renewal.

- b. Acting as a supervisor without proper qualification, as provided in rule 193F—4.7(543D).
- c. Habitual intoxication or addiction to the use of drugs, or impairment that adversely affects the registrant's or certificate holder's ability to practice in a safe and competent manner.
- d. Any act, conduct, or condition, including lack of education or experience and careless or intentional acts or omissions, that demonstrates a lack of qualifications that are necessary to ensure a high standard of professional care as provided in Iowa Code section 272C.3(2) "b," or that impairs a practitioner's ability to safely and skillfully practice the profession.
- e. Failure to meet the minimum qualifications for registration as an associate appraiser or certification as a certified real property appraiser.

f. Practicing outside the scope of a certification, or outside the scope of a supervisor's certification.

6.3(6) *Negligence by the registrant or certificate holder in the practice of the profession.* Negligence by the registrant or certificate holder in the practice of the profession includes but is not limited to:

- a. A failure to exercise due care including negligent delegation of duties to or supervision of associate appraisers, or other employees, agents, or persons, in developing an appraisal, preparing an appraisal report, or communicating an appraisal, whether or not injury results.
- b. Neglect of contractual or other duties to a client.

6.3(7) *Professional misconduct.*

- a. Violation of a regulation or law of this state, another state, or the United States, which relates to the practice of real estate appraising.
- b. Engaging in any conduct that subverts or attempts to subvert a board investigation.
- c. Revocation, suspension, or other disciplinary action taken by a licensing authority of this state or another state, territory, or country. A stay by an appellate court will not negate this obligation; however, if such disciplinary action is overturned or reversed by a court of last resort, discipline by the board based solely on such action will be vacated.
- d. A violation of Iowa Code section 543D.18.
- e. A violation of Iowa Code section 543D.20 (limitations on persons assisting in the development or reporting of a certified appraisal).
- f. Failure to retain records as provided in Iowa Code section 543D.19.
- g. Violation of the terms of an initial agreement with the impaired practitioner review committee or violation of the terms of an impaired practitioner recovery contract with the impaired practitioner review committee.

6.3(8) *Willful or repeated violations.* The willful or repeated violation or disregard of any provision of Iowa Code chapter 272C or 543D, or any administrative rule adopted by the board in the administration or enforcement of such chapters.

6.3(9) *Failure to report.*

- a. Failure by a registrant or certificate holder or an applicant for a registration or certificate to report in writing to the board any revocation, suspension, or other disciplinary action taken by a licensing authority, in Iowa or any other jurisdiction, within 30 calendar days of the final action.
- b. Failure of a registrant or certificate holder or an applicant for a registration or certificate to report, within 30 calendar days of the action, any voluntary surrender of a professional license to resolve a pending disciplinary investigation or action, in Iowa or any other jurisdiction.
- c. Failure to notify the board of a criminal conviction within 30 calendar days of the action, regardless of the jurisdiction where it occurred.
- d. Failure to notify the board within 30 calendar days after occurrence of any adverse judgment in a professional or occupational malpractice action, or settlement of any claim involving malpractice, regardless of the jurisdiction where it occurred.
- e. Failure to report another registrant or certificate holder to the board for any violation listed in these rules, pursuant to Iowa Code section 272C.9(2), promptly after the registrant or certificate holder becomes aware that a reportable violation has occurred.
- f. Failure to report to the board the appraiser's principal place of business and any change in the appraiser's principal place of business within 30 calendar days of such change.

g. Failure of an associate appraiser or supervisor to timely respond to board requests for information, as provided in 193F—Chapter 4.

6.3(10) *Failure to comply with board order.* Failure to comply with the terms of a board order or the terms of a settlement agreement or consent order, or other decision of the board imposing discipline.

6.3(11) *Conviction of a crime.*

a. Conviction, in this state or any other jurisdiction, of any felony offense that directly relates to the profession, or of any crime that is substantially related to the qualifications, functions, duties or practice of a person developing or communicating real estate appraisals to others. Any crime involving deception, dishonesty or disregard for the safety of others will be deemed directly related to the practice of real property appraising. A certified copy of the final order or judgment of conviction or plea of guilty in this state or in another jurisdiction will be conclusive evidence of the conviction. “Conviction” includes any plea of guilty or nolo contendere, including Alford pleas, or finding of guilt whether or not judgment or sentence is deferred, withheld, or not entered, and whether or not the conviction is on appeal. If such conviction is overturned or reversed by a court of last resort, discipline by the board based solely on the conviction will be vacated. A conviction qualifies as a felony offense if the offense is designated as a felony in the jurisdiction in which the conviction occurred, or if the offense is committed in this state, the offense would be a felony, without regard to its designation elsewhere. An offense directly relates to the profession if either:

(1) The actions taken in furtherance of an offense are actions customarily performed within the scope of practice of the profession, or

(2) The circumstances under which an offense was committed are circumstances customary to the profession.

b. Notwithstanding the foregoing, a conviction may be grounds for revocation or suspension only if an unreasonable risk to public safety exists because the offense directly relates to the duties and responsibilities of the profession.

These rules are intended to implement Iowa Code chapters 17A, 272C and 543D and 2007 Iowa Acts, Senate File 137.

ITEM 2. Rescind **193F—Chapter 7.**