

ARCHITECTURAL EXAMINING BOARD[193B]

Notice of Intended Action

**Proposing rulemaking related to disciplinary action for unlicensed practice
and providing an opportunity for public comment**

The Architectural Examining Board hereby proposes to rescind Chapter 7, “Disciplinary Action—Unlicensed Practice,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 272C.3 to 272C.5, 544A.5 and 544A.29.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 17A, 272C and 544A.

Purpose and Summary

This proposed chapter provides Iowans with information about the disciplinary process and possible actions against those who practice architecture without a license. The public knows that the Board can take disciplinary action for violations of the Board’s rules. The public has the ability to submit a complaint to the licensing board who can then investigate the complaint. The Board has the ability to seek discipline for unlicensed practice, ensuring that the public is protected. The proposed chapter was approved by the Board on November 30, 2023.

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 comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 31, 2024. Comments should be directed to:

Lori SchraderBachar
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9030
Email: lori.schraderbachar@iowa.gov

Public Hearing

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

January 30, 2024 11:50 a.m.	6200 Park Avenue, Suite 100 Des Moines, Iowa Video call link: meet.google.com/yxd-hmkw-ppo
January 31, 2024 11:50 a.m.	6200 Park Avenue, Suite 100 Des Moines, Iowa Video call link: meet.google.com/yxd-hmkw-ppo

The Department may address agenda items out of sequence to accommodate persons appearing before the Department or to aid in the efficiency or effectiveness of the meeting.

All meetings held by the Department are accessible to everyone. Any persons who need special accommodations to participate should call 515.281.0254 (TDD: 1.800.735.2942) as soon as possible in advance of the meeting to ensure sufficient time to make the appropriate accommodations.

Public attendees may make comments at the conclusion of each board director's report.

The boards reserve the right to limit the length of comments based on the number of individuals who wish to speak.

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.

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. Rescind 193B—Chapter 7 and adopt the following **new** chapter in lieu thereof:

CHAPTER 7
DISCIPLINARY ACTION—UNLICENSED PRACTICE

193B—7.1(544A,272C) Disciplinary action. The architectural examining board has authority in Iowa Code chapters 544A, 17A and 272C to impose discipline for violations of these chapters and the rules promulgated thereunder.

193B—7.2(544A,272C) Investigation of complaints. The board will, upon receipt of a complaint in writing, or may, upon its own motion, pursuant to other evidence received by the board, review and investigate alleged acts which the board reasonably believes constitute cause under applicable law or administrative rules. In order to determine if probable cause exists for a hearing on a complaint, the investigators designated by the chairperson will investigate the allegations of the complaint. If the board determines that the complaint does not present facts which constitute a basis for disciplinary action, the board may take no further action.

193B—7.3(544A) Civil penalties against unlicensed person. The board may impose civil penalties by order against a person who is not licensed as an architect pursuant to Iowa Code chapter 544A based on the unlawful practices specified in Iowa Code section 544A.15(3). In addition to the procedures set forth in Iowa Code section 544A.15(3), this rule applies.

7.3(1) The notice of the board's intent to impose a civil penalty required by Iowa Code section 544A.15(3) may be served upon the unlicensed person by restricted certified mail, return receipt

requested, or personal service in accordance with Rule of Civil Procedure 1.305. Alternatively, the unlicensed person may accept service personally or through authorized counsel. The notice includes the following:

- a.* A statement of the legal authority and jurisdiction under which the proposed civil penalty would be imposed.
- b.* Reference to the particular sections of the statutes and rules involved.
- c.* A short, plain statement of the alleged unlawful practices.
- d.* The dollar amount of the proposed civil penalty.
- e.* Notice of the unlicensed person's right to a hearing and the time frame in which a hearing is requested.
- f.* The address to which written request for hearing is made.

7.3(2) Unlicensed persons need to request a hearing in writing within 30 days of the date the notice is mailed, if served through restricted certified mail to the last-known address, or within 30 days of the date of service, if service is accepted or made in accordance with Rule of Civil Procedure 1.305. A request for hearing is deemed made on the date of the United States Postal Service postmark or the date of personal service.

7.3(3) If a request for hearing is not timely made, the board chair or the chair's designee may issue an order imposing the civil penalty described in the notice. The order may be mailed by regular first-class mail or served in the same manner as the notice of intent to impose civil penalty.

7.3(4) If a request for hearing is timely made, the board issues a notice of hearing and conducts a hearing in the same manner as applicable to disciplinary cases against licensed architects.

7.3(5) In addition to the factors set forth in Iowa Code section 544A.15(3), the board may consider the following when determining the amount of civil penalty to impose, if any:

- a.* The time lapsed since the unlawful practice occurred.
- b.* Evidence of reform or remedial actions.
- c.* Whether the violation is a repeat offense following a prior warning letter or other notice of the nature of the infraction.
- d.* Whether the violation involved an element of deception.
- e.* Whether the unlawful practice violated a prior order of the board, court order, cease and desist agreement, consent order, or similar document.
- f.* The clarity of the issue involved.
- g.* Whether the violation was willful and intentional.
- h.* Whether the unlicensed person acted in bad faith.
- i.* The extent to which the unlicensed person cooperated with the board.

7.3(6) An unlicensed person may waive the right to hearing and all attendant rights and enter into a consent order imposing a civil penalty at any stage of the proceeding upon mutual consent of the board.

7.3(7) The notice of intent to impose civil penalty and order imposing civil penalty are public records available for inspection and copying in accordance with Iowa Code chapter 22. Copies may be provided to the media, the National Council of Architectural Registration Boards, and other entities. Hearings are open to the public.

These rules are intended to implement Iowa Code section 544A.15.