

REAL ESTATE COMMISSION[193E]

Notice of Intended Action

**Proposing rulemaking related to definitions
and providing an opportunity for public comment**

The Real Estate Commission hereby proposes to rescind Chapter 2, “Definitions,” 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 chapter 543B.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 17A, 272C and 543B.

Purpose and Summary

This proposed chapter provides Iowans and licensees and their employers with definitions relevant to the practice of real estate. These proposed rules articulate practice standards and provide a scope of practice for the profession.

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 Commission no later than 4:30 p.m. on January 30, 2024. Comments should be directed to:

Renee Paulsen
Real Estate Commission
6200 Park Avenue
Des Moines, Iowa 50321
Email: renee.paulsen@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 to 11:20 a.m.

6200 Park Avenue
Des Moines, Iowa

January 31, 2024
11 to 11:20 a.m.

6200 Park Avenue
Des Moines, Iowa

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 Commission 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. Rescind 193E—Chapter 2 and adopt the following **new** chapter in lieu thereof:

CHAPTER 2
DEFINITIONS

193E—2.1(543B) Definitions.

“Additional license” means any officer or partner license(s) issued based upon and dependent or contingent upon the primary or main officer or partner license, but assigned to a different corporation or partnership.

“Advance fees” means any fees charged for services to be paid in advance of the rendering of such services including, without limitation, any fees charged for listing, advertising, or offering for sale or lease any real property, but excluding any fees paid solely for advertisement in a newspaper of general circulation.

“Affiliated licensee” means a broker associate or salesperson, as defined in Iowa Code section 543B.5(5) and 543B.5(19), who is under the supervision of a broker.

“Applicant” means a person who has applied for or intends to apply for a real estate salesperson or real estate broker license.

“Application form” means the form furnished by the commission to be completed and submitted to apply for an original license as a real estate salesperson, real estate broker, real estate firm or trade name.

“Branch office license” means the same as “duplicate license” as used in Iowa Code section 543B.31.

“Broker” means any person holding an Iowa real estate broker license as defined in Iowa Code section 543B.3.

“Brokerage agreement” means the same as defined in Iowa Code section 543B.5(7).

“Broker associate” means the same as defined in Iowa Code section 543B.5(5).

“Buyer” includes a purchaser, tenant, vendee, lessee, party to an exchange, or grantee of an option. Selected rules in these chapters will at times refer separately to “buyers” and “tenants” to clarify licensees’ duties and obligations.

“Client” means the same as defined in Iowa Code section 543B.5(9).

“Commission” means the real estate commission.

“Common source information companies” means any individual, corporation, limited liability company, business trust, estate, trust, partnership, association, or any other legal entity (except any government or governmental subdivision or agency, or any officer or employee thereof acting in such individual’s official capacity) that is a source, compiler, or supplier of information regarding real estate for sale or lease and other data and includes, but is not limited to, multiple listing services.

“Completed application” means an original or renewal application timely received with all necessary information, documents, signatures, fees or penalties.

“*Confidential information*” means information made confidential by statute, regulation, or express instructions from the client. Confidential information does not include “material adverse facts” as defined in Iowa Code section 543B.5(14). Confidential information includes, but is not limited to, the following:

1. Information concerning the client that, if disclosed to the other party, could place the client at a disadvantage when bargaining;
2. That the seller or landlord is willing to accept less than the asking price or lease price for the property;
3. That the buyer or tenant is willing to pay more than the asking price or lease price for the property;
4. The motivating factors for the party selling or leasing the property;
5. The motivating factors for the party buying or leasing the property;
6. That the seller or landlord will agree to sale, lease, or financing terms other than those offered;
7. That the buyer or tenant will agree to sale, lease, or financing terms other than those offered;
8. The seller’s or landlord’s real estate needs;
9. The buyer’s or tenant’s real estate needs;
10. The seller’s or landlord’s financial information, except that the seller’s ability to sell and the landlord’s ability to lease are considered a material fact;
11. The buyer’s or tenant’s financial qualifications, except that the buyer’s ability to buy and the tenant’s ability to lease are considered a material fact.

Confidential information is not disclosable unless one of the following applies:

1. The client to whom the information pertains provides informed written consent to disclose the information;
2. The disclosure is mandated by statute or regulation, or failure to disclose the information would constitute fraudulent representation;
3. The information is made public or becomes public by the words or conduct of the client to whom the information pertains or from a source other than the licensee; or
4. The disclosure is necessary to defend the licensee against an accusation of wrongful conduct in an actual or threatened judicial proceeding, an administrative proceeding before the commission, or in a proceeding before a professional committee.

“*Consumer*” means a person seeking or receiving real estate brokerage services.

“*Contract between the buyer and seller*” means an offer to purchase, a sales contract, an option, a lease-purchase option, an offer to lease, or a lease.

“*Conviction*” means the same as defined in Iowa Code section 543B.15(3).

“*Customer*” means a consumer of real estate services in connection with a real estate transaction who is not being represented by the licensee, but for whom the licensee may perform ministerial acts. A customer may be a client of another broker, may have yet to decide whether or not to be represented by any broker, or may have chosen not to be represented by any broker.

“*Designated broker*” means the broker or broker associate designated as the person in charge of and responsible for supervision of a main office or branch office as defined in Iowa Code section 543B.5(11).

“*Dual agent*” means a licensee who, with the written informed consent of all the parties to a contemplated real estate transaction, has entered into a brokerage agreement with and therefore represents the seller and buyer or both the landlord and tenant in the same in-house transaction.

“*Duplicate license*” or “*replacement license*” means a license reissued for the remainder of a license term, at the written request of the broker, to replace a lost or destroyed license.

“*Electronic format*” means a record generated, communicated, received, or stored by electronic means, and is in a format that has the continued capability to be retrieved and legibly printed upon request.

“*Examination*” means a licensure examination necessary before issuance of a license.

“*Examinee*” means a person who has registered or intends to register to take a licensure examination.

“*Filed*” means that documents or application and fees are considered filed with the commission on the date postmarked, not the date metered, or on the date personally delivered to the commission office.

“*Firm*” means a licensed partnership, association, limited liability company, or corporation.

“*Licensee*” means the same as defined in Iowa Code section 543B.5(13).

“*Listing broker*” means the real estate broker who obtains a listing of real estate or of an interest in a residential cooperative housing corporation.

“*Ministerial acts*” means those acts that a licensee may perform for a consumer that are informative in nature and do not rise to the level of specific assistance on behalf of a consumer. For purposes of these rules, ministerial acts include, but are not limited to, the following:

1. Responding to general telephone inquiries by consumers as to the availability and pricing of brokerage services;
2. Responding to general telephone inquiries from a consumer concerning the price, facts and features, or location of property;
3. Attending an open house and responding to general questions from a consumer about the facts and features of the property;
4. Setting an appointment to view property;
5. Responding to general questions of consumers walking into a licensee’s office concerning brokerage services offered or the facts and features of particular properties;
6. Accompanying an appraiser, inspector, contractor, or similar third party on a visit to a property;
7. Describing the facts and features of a property or the property’s condition in response to a consumer’s inquiry;
8. Completing business or factual information for a consumer on an offer or contract to purchase on behalf of a client;
9. Showing a client through a property being sold by an owner; or
10. Referring a person to another broker or service provider.

“*Moral turpitude*” means an act of baseness, vileness, or depravity, in the private and social duties which a person owes to another person or to society in general, contrary to the accepted and customary rule of right and duty between person and person. It is conduct that is contrary to justice, honesty and good morals. Various factors may cause an offense which is generally not regarded as constituting moral turpitude to be regarded as such. A crime of moral turpitude as specified in Iowa Code section 543B.15(3) shall include without limitation forcible felonies as delineated in Iowa Code section 702.11.

“*Original license*” means the license of a salesperson, broker, or firm that covers the first term of licensure in Iowa. A license applied for and reissued after the final deadline for renewal of a license is also an original license.

“*Primary license*” or “*main license*” means the original license issued based upon examination, including any subsequent renewals or reinstatements of the license. Continuing education is necessary to renew to active status.

“*Principal broker*” means a broker who is either a real estate proprietor, a partner in a real estate partnership, or an officer in a real estate corporation.

“*Renewal application form*” means the form furnished by the commission to be completed and submitted to apply for renewal of a license as a real estate salesperson, real estate broker, real estate firm, branch office or trade name.

“*Salesperson*” means any person holding an Iowa real estate salesperson license as defined in Iowa Code section 543B.5(19).

“*Seller*” includes an owner, landlord, vendor, lessor, party to an exchange, or grantor of an option. Selected rules in these chapters will at times refer separately to “sellers” and “landlords” to clarify licensees’ duties and obligations.

“*Selling broker*” means a real estate broker who finds and obtains a buyer in a transaction.

“*Single agent*” means a licensee who represents only one party in a real estate transaction. A single agent includes a broker and any affiliated broker associates or salespersons representing a party exclusively or nonexclusively, regardless of whether the single agent be all affiliated broker associates or salespersons, or only the identified broker associates or salespersons, or a group of identified broker associates or salespersons. A single agent may be one of the following:

1. “Seller’s agent” which means a licensee who represents the seller in a real estate transaction;
2. “Landlord’s agent” which means a licensee who represents the landlord in a leasing transaction;

3. “Buyer’s agent” which means a licensee who represents the buyer in a real estate transaction; and

4. “Tenant’s agent” which means a licensee who represents the tenant in a leasing transaction.

“*Sole-proprietor broker*” means an individual or single license broker who privately owns and manages a real estate company.

“*Specific assistance*” means any communication beyond casual conversation concerning the facts and features of a property which occurs prior to the point of discussing price range or any specific, financial qualifications of the buyer or tenant, or selling or buying motives or objectives of the seller or buyer, or tenant or landlord, or eliciting or accepting information involving a proposed or preliminary offer associated with a specific property, in which the person may unknowingly divulge any confidential personal or financial information, which, if disclosed to the other party, could harm the party’s bargaining position. For the purposes of these rules, “specific assistance” does not include preliminary conversations or “small talk” concerning location and property styles, or responses to general factual questions from a potential buyer or tenant concerning facts and features of properties which have been advertised for sale or lease.

“*Status*” means the condition of a real estate license. A license may be active, inactive, expired, suspended, revoked or canceled. “Inactive license” is defined in Iowa Code section 543B.5(12).

“*Subagent*” means a broker and a broker’s affiliated licensees, engaged by another broker to act as an agent for a client. The subagent has the same obligations and responsibilities to the client as the primary broker representing the client.

“*Third party*” means a person or entity that is not a client, is not a party to the transaction, and has no agency relationship to a real estate brokerage.

“*Timely*” means done or occurring at a reasonable time under the circumstances.

“*Timely received*” means postmarked, not metered, not later than midnight on the last date of the deadline specified by the Iowa Code or commission rules.

“*Transaction*” means the sale, exchange, purchase, or rental of, or the granting or acceptance of, an option to sell, exchange, purchase, or rent an interest in real estate, but excluding the subleasing of an interest in a residential cooperative housing corporation, when the leases are for one year or less.

“*Type*” means the category to which a broker license or firm license is issued. A broker license may be issued as a sole-proprietor broker, broker officer, broker partner, or broker associate. A firm license may be issued as a corporation, partnership or association.

“*Undisclosed dual agent*” means a licensee representing two or more clients in the same transaction whose interests are adverse without the knowledge and informed consent of the clients.

This rule is intended to implement Iowa Code chapters 17A, 272C and 543B.