

ARCHITECTURAL EXAMINING BOARD[193B]

Adopted and Filed

Rulemaking related to disciplinary action

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

Legal Authority for Rulemaking

This rulemaking is adopted 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 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, which can then investigate the complaint. The Board has the ability to seek discipline for unlicensed practice, ensuring the public is protected.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on January 10, 2024, as **ARC 7441C**. Public hearings were held on January 30 and 31, 2024, at 11:50 a.m. at 6200 Park Avenue, Suite 100, Des Moines, Iowa, and virtually. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Board on March 21, 2024.

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.

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).

Effective Date

This rulemaking will become effective on May 22, 2024.

The following rulemaking action is adopted:

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 that 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 that 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.

[Filed 3/25/24, effective 5/22/24]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/17/24.