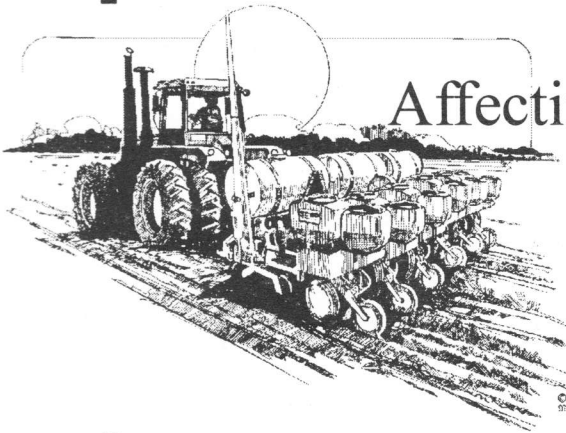


Mandatory

# Law Update

## Federal and State Laws

Affecting Iowa Practice



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Note: this program should not be used as a substitute for competent legal advice.

Note: the opinions of the author are not necessarily those of the  
Iowa Real Estate Commission

## Chapter 1

### Agency Update. . . Consumer options in the buying and selling of real estate

**Overview:** It has long been held that real estate agents possess an agency relationship with their clients. This relationship has caused much confusion. In the normal fiduciary relationship, the lawyer, doctor or CPA only works with one individual; in the real estate profession, the licensee may work with both parties to the transaction. Here's the problem: *Which party does the agent represent? — To whom does the agent owe her loyalty and allegiance?* This chapter covers basic agency definitions and offers practical situations when various types of agency may be implemented. Practical illustrations are suggested to enable the licensee a better working knowledge of the law.

**Note:** This course may not be used as a substitute for competent legal advice.

**Learning objectives:** as a result of studying this chapter you should be able to:

- ☒ Explain the historical landscape behind agency law.
- ☒ Analyze perspectives regarding the consumer confusion about agency.
- ☒ List numerous requirements of modern agency law.

#### Definition: Agency

**Definition #1:** Agency is a mechanism in which one person selects another person to do something for him, instead of doing it himself. (Who's My Boss? Jules Schneider and Bill Tune, Copyright 1989 by Gorsuch Scarisbrick, Publishers, Scottsdale, AZ 85258)

**Definition #2:** Agency includes every relation in which one person acts for or represents another by latter's authority. (Black's Law Dictionary)

**Definition #3:** Agency is the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act. (Restatement of the Law, Second, American Law Institute, Agency 2d, page 7)

**Definition #4:** "Agency" means a relationship in which a real estate broker acts for or represents another by the other person's express authority in a transaction. (Iowa Code 543B.7)

#### Background

##### Consumer Confusion: Ancient

Since the early days of real estate brokerage, consumers have shown confusion about real estate brokerage and agency relationships. Early Iowa Supreme Court decisions, starting in 1905, evidence such confusion, including:

Larson vs. Thoma  
Rodenchirch vs. Layton  
Havner vs. Miller  
Foley vs. Mathias  
Mentzel vs. Morse  
Swift vs. White.

Common questions arise in these cases:

- ◆ Does the broker only represent the party paying his commission?
- ◆ May subtle statements made by parties to the transaction cause the broker to become a dual agent?
- ◆ Is it wrongful to list properties owned by different sellers which are competing in their characteristics and amenities?
- ◆ May the broker perform ministerial acts for another person without breaking allegiance to his principal?

### **Consumer confusion: Modern**

In more recent times, surveys and studies have shown that the confusion continues to exist.

“During the first half of the 1980s, considerable discussion of who represents whom in real estate transactions took place. . . Several major studies were prepared during this period to try to determine what caused the confusion and possible solutions to the problem. Major studies were prepared by the National Association of Real Estate License Law Officials (NARELLO) and the National Association of Realtors (NAR). The Federal Trade Commission and several states, including the Hawaiian Real estate Commission and the California Department of Real Estate, also undertook studies of this problem. . . Of the studies done, several different conclusions were developed. There was one common conclusion, however, and that was that consumers as well as real estate brokers are confused about who represents whom. The studies also revealed that much confusion exists about what level of service the real estate agent provides. Apparently, there is a pressing need to clarify and clearly articulate the various agency relationships. The issue of dual agency, which has proven to be most troublesome, is perhaps the least-understood relationship.” (Who’s My Boss? Jules Schneider and Bill Tune, Copyright 1989 by Gorsuch Scarisbrick, Publishers, Scottsdale, AZ 85258)

### **Woman Alleges Fraud on Part of Edina Realty**

Claims firm surreptitiously represented buyer and seller in a home transaction  
Minnesota Star Tribune, April 14, 1992

A Minnetonka homeowner sued Edina Realty, Monday, charging that the company defrauded some of its home-buying customers by not telling them that its agents were also representing the sellers.

Douglas A. Kelly and Rod Wilson, attorneys for plaintiff Jamie C. Bokusky, are seeking to have the complaint certified as a class action, to include all buyers and sellers in home transactions in which both sides were represented by agents of Edina Realty.

“We basically became aware of this practice of Edina Realty through a Realtor who does engage in representing only one party of a transaction, so we investigated it and sought class representatives who would be willing to initiate the class action.” Wilson said.

Edina Realty officials declined to comment. The suit was filed in U.S. District Court in Minneapolis.

Bokusky, who asked agents from Edina Realty to help her buy a house in August from sellers who also used Edina Realty agents, maintains in the complaint that she wasn’t aware that the seller was using Edina agents. Bokusky was one of about 20 Edina Realty clients contacted by Kelley and Wilson in the in-



vestigation.

Minnesota Commerce Commissioner Bert McKay, whose department regulates real estate agents, said late yesterday that he was unaware of the suit.

The complaint names the brokerage's parent company, Metropolitan Financial Inc., Metropolitan Financial President Roger Rovick and a number of its directors. The suit alleges fraud, breach of fiduciary duty, breach of contract and violation of the Racketeer Influence and Corrupt Organizations Act. The latter charges would be sought through allegations of mail and wire fraud, Kelley said.

### **Basic Definitions:**

**Agent:** One who is authorized to represent and to act on behalf of another person.

**Appointed agent:** "Appointed agent" means that affiliated licensee who is appointed by the designated broker of the affiliated licensee's real estate brokerage agency to act solely for a client of that brokerage agency to the exclusion of other affiliated licensees of that brokerage agency.

**Client:** "Client" means a party to a transaction with whom the broker has a brokerage agreement for brokerage services or who a licensee represents in the transaction.

**Customer:** "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 not have yet decided whether or not to be represented by any broker, nor may have chosen not to be represented by any broker.

**Dual agent:** the agent representing both parties to the real estate transaction.

**Principal:** In a fiduciary relationship, the principal is the person who hires a real estate broker to represent him or her in the sale of property.

**Subagent:** "Subagent" means a broker and their 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:** "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.

**Undisclosed dual agent:** "Undisclosed dual agent" means a licensee who represents two or more clients in the same transaction whose interests are adverse without the knowledge and informed consent of the clients.

### **Fiduciary Obligations to Principals**

When a licensee is representing a principal in the transaction, the agent normally has the following duties:

- ⇒ Skillfully perform the terms of the written contract with the principal.
- ⇒ Promote the interest of the principal with utmost care, integrity, honesty and loyalty.
- ⇒ Continue to seek a favorable contract for the principal.
- ⇒ Present in a timely manner all contracts to the principal for his/her consideration.
- ⇒ Disclose known adverse facts about the transaction and property to the principal.
- ⇒ Refer the principal to experts for questions the agent is not trained to answer.
- ⇒ Keep the principal's confidential information confidential (e.g., information which might place the principal at a disadvantage when negotiating; information about the principal's bargaining price; disclosure about the principal's motivation factors for buying or selling; the principal's needs or financial information).
- ⇒ Account for all money in a timely manner.
- ⇒ Comply with all state and federal laws.

### **Obligations to Customers**

When the agent is representing a principal in a transaction, the agent:

- ⇒ Shall disclose to the customer all material adverse facts actually known by the licensee according to Iowa Law.
- ⇒ May provide assistance to the customer by performing ministerial acts (e.g., preparing offers, presenting offers, provide information and assistance concerning professional services not related to real estate brokerage service, etc.)
- ⇒ May show alternative properties not owned by the seller or landlord to prospective buyers or tenants and may list competing properties for sale or lease without breaching any duty or obligation to the seller or landlord. The licensee may show properties in which the buyer or tenant is interested to other prospective buyers or tenants, may assist other competing buyers or tenants, and may enter into brokerage service agreements with other competing buyers or tenants without breaching any duty or obligation to the buyer or tenant.

### **Duties to All Parties**

In providing brokerage services to all parties to a transaction, a licensee shall do all of the following:

- ⇒ Provide brokerage services to all parties to the transaction honestly and in good faith.
- ⇒ Diligently exercise reasonable skill and care in providing brokerages services to all parties.
- ⇒ Disclose to each party all material adverse facts that the licensee knows except for the following: material adverse facts known by the party; material adverse facts the party could discover through a reasonably diligent inspection, and which would be discovered by a reasonably prudent person under like or similar circumstances; material adverse facts the disclosure of which is prohibited by law; material adverse facts that are known to a person who conducts an inspection on behalf of the party.
- ⇒ Account for all property coming into the possession of a licensee that belongs to any party within a reasonable time of receiving the property.

### **Typical Situations when an agent could/would/should choose to be a(n):**

Seller's Agent.  
 Buyer's Agent.  
 Subagent.  
 Disclosed Dual Agent.  
 Appointed Agent.

### **Situations appropriate for becoming a Seller's Agent:**

- ⇒ The seller calls you to list their property.
- ⇒ You are not working as a buyer's agent to find a property with characteristics of the seller's property.
- ⇒ Your company policy prohibits you from becoming anything other than a seller's agent.
- ⇒ The seller has no plans for purchasing another property in the licensee's geographic servicing area.
- ⇒ The buyer's agency company will share the commission with a seller's agent; the seller is unwilling to pay the commission.

### **Situations appropriate for becoming a Buyer's Agent:**

- ⇒ The buyer calls upon you to find a property to solve certain personal or business needs.
- ⇒ You are not working as a seller's agent to market property which is desired by the buyer.
- ⇒ Your company policy prohibits you from entering any agreement other than a buyer's agency agreement.
- ⇒ The listing company will share the commission with a buyer's agent; the buyer is unwilling to pay the commission.

### **Situations appropriate for becoming a Subagent:**

- ⇒ The agent is willing to become responsible for misrepresentations made by the subagent; the seller is willing to become responsible for misrepresentations made by the subagent.

- ⇒ The agent wants more control over the activities of those working with the agent; the agent requires all licensees working with the agent be a subagent.
- ⇒ The agent has obtained an open listing on the seller's property and offers subagency to ensure the subagent will not solicit a listing for his own on this same property.
- ⇒ The agent requires that licensees showing her listing will supply the agent with the necessary list of prospective buyers who have viewed the property for protection under the "safety/protective" clause once the listing has expired.
- ⇒ The agent wants a strict joint venture with other licensees; she is able to accomplish this by offering subagency.

Reasons for not allowing subagency would include: 1. the seller/listing agent does not want liability for misrepresentations made by the subagent. 2. the listing company is a "principals only" company and will not share the commission with anyone outside their office.

### **Situations appropriate for becoming a Disclosed Dual Agent.**

- ⇒ The buyer wants to purchase a property which is listed with the agent who is also helping the buyer.
- ⇒ The seller is not looking for a property in which to live; the desired property is listed with the broker who just recently listed and sold this same seller's property.
- ⇒ Both buyer and seller want fiduciary duties performed by the same company and are willing to abide by the limitations established by Iowa law.
- ⇒ The broker lists a property which has characteristics desired by the buyer who has a buyer's agency agreement with the listing broker.

### **Situations inappropriate for becoming a Disclosed Dual Agent.**

Sometimes agents automatically make all in-house transactions disclosed dual agency transactions. I believe it to be inappropriate for an agent to represent buyer and seller when the agent owns the property. It becomes obvious that the seller, who is also the agent, cannot act in an unbiased manner toward all parties in the transaction.

The buyer and seller have agreed to disclosed dual agency in their transaction. Two (2) agents in the office are handling the details for their respective clients. The agents may share confidential client information between themselves; they may never relay this information without written permission to their clients. (if you think this is an incorrect statement, consider that one (1) agent may facilitate the entire transaction and possess both clients' confidential information.—What's the difference?). If clients do not want agents to engage in this kind of sharing, disclosed dual agency should not be used. If companies strictly limit "sharing" between agents during dual agency transactions, the companies are in actuality importing *appointed agency* requirements into the dual agency transaction. See Appointed Agency requirements, below.

### **Situations appropriate for becoming an Appointed Agency**

What is "Appointed Agency?" When buyer and seller are unhappy about the "scaled down" fiduciary services available to them under disclosed dual agency, the designated broker may suggest the use of appointed agency. If agreeable to all parties, the broker would divide the office into teams which would show loyalty to either the buyer or the seller, but never both. That is, certain agents would exclusively represent the seller in the transaction and certain other company agents would exclusively represent the buyer in the same transaction. The designated broker (probably the owner of the company or branch office manager) would serve as liaison and is legally able to receive confidential, fiduciary information from the buyer's licensees or the seller's licensees, but must not betray this information to opposing team members.

Suppose that both buyer and seller have agreed to pay a commission in this transaction. Does this

make the designated broker a dual agent? No; when fulfilling appointed agency laws, Iowa statutes shield the designated broker from liability under undisclosed dual agency laws.

There is a “money” reason for appointed agency. The listing broker may like to keep the transaction totally “in house” (i.e., the broker does not want to share the commission with another company) and both buyer and seller have refused the limited fiduciary duties available under dual agency. Instead of referring either the buyer or seller to another real estate company for fiduciary services, all parties may agree to appointed agency, giving seller and buyer the *full* fiduciary protection they desire.

### **Coverage of Iowa Laws and Rules and Regulations**

543B.56

Duties to all parties to the transaction.

Duties to a client.

Prohibited conduct.

543B.57

Confirmation and disclosure of relationship.

When to disclose.

What is “specific assistance?”

Disclosure essentials.

Compensation agreements.

543B.58

Representing more than one party; Dual Agency

543B.59

Representing more than one party; Appointed Agency

### **Establishing a Company Policy**

Iowa statutes require each real estate office to have a written company policy which describes agency relationships available in that office. If multiple agency relationships are available, such as disclosed dual agency, the policy must also describe Iowa’s newest mode of agency: appointed agency.

When appointed agency is available (or any relationship in which multiple parties are represented), the policy must alert the public to office procedures designed to prevent mishandling of information through both formal and informal sharing of information, the physical make-up of the office and personal relationships of affiliated licensees who are representing clients with adverse interests. See the Iowa statutes regarding company policies under 193E—12/1 (543B) in the Appendix included with this program.

Although a company policy on agency is required by law, it is no longer necessary to give this to customers and clients. However, most real estate licensees do give the company policy agency disclosure very early in their acquaintance with prospective buyers and sellers and landlords and tenants. The reason for this may be that their agency relationship forms make direct reference to this company policy.

## Chapter 2

### Iowa Real Estate Commission Problem Areas

**Overview:** Numerous complaints have been received by the Iowa Real Estate Commission about licensees. The following is a summary illustrating the most frequent licensee violations.

**Learning objectives:** after studying this section, you should be able to:

- ☒ Give examples of laws and regulations most frequently violated by real estate agents in Iowa.
- ☒ Analyze laws and regulations most frequently violated by real estate agents in Iowa.
- ☒ Recite ways to more fully comply with important rules and regulations governing licensee practice in Iowa.
- ☒ Give examples of professional incompetency as it relates to practice in Iowa.

#### **Problem Area: Listings.**

Iowa's rule and regulation pertaining to listing contracts has the purpose of establishing minimum requirements for compensation recovery; should these standards not be met in the listing contract, the client may have sufficient reason to avoid payment of compensation. The Iowa Supreme Court has called this regulation a type of *statute of frauds* which prevents certain contracts from being enforced in court. As you examine the rule below, notice the importance placed upon all essentials, such as: definite termination date; signatures of all parties concerned; a statute against automatic renewal clauses and others. The rule further declares the practice of taking a "net" listing as against the law. This prohibited action condemns such a practice for good cause. First, the agent may be tempted to withhold disclosure about the fair market value of the property from the seller. Second, the net listing entices the licensee to only present offers which are favorable to the broker (because the broker will "net" all proceeds above a certain minimum reserve price by the seller). Since Iowa statutes require presentation of all offers, net listings would encourage the broker to commit a violation of a different statute designed to protect the public.

Also found in this section is a regulation designed to prevent licensees from having their listing contracts interfered with by another agent. Even before this statute became effective in Iowa, courts and boards of REALTORS were enforcing judgments against brokers who "invaded the privacy" of another agent's exclusive listing. Now licensees may have actions taken against them in the courts, the local board of REALTORS and the regulatory agency.

#### **193E-11.3 (543B) Listings. (unofficial copy)**

All listing agreements shall be in writing, properly identifying the property and containing all of the terms and conditions under which the property is to be sold, including the price, the commission to be paid, the signatures of all parties concerned and a definite expiration date. The agreement shall contain no provision requiring a party signing the listing to notify the broker of the listing party's intention to cancel the listing after such definite expiration date. An exclusive agency or exclusive right to sell listing shall clearly indicate that it is such an agreement. A legible copy of every written listing agreement or other written authorization shall be given to the owner of the property by a licensee as soon as reasonably practical after the signature of the owner is obtained.

11.1(1) a licensee shall not solicit or enter into a listing or brokerage agreement with an owner if the licensee knows or has reason to know that the owner has a written unexpired exclusive agency or exclusive right to sell listing agreement to the property with another broker, unless the owner initiates the discussion and the licensee has not directly or indirectly solicited the listing or brokerage agreement.

A. However, if the owner initiates the discussion, the licensee may negotiate and enter into a listing or



brokerage agreement that will take effect after the expiration of the current listing.

- B. If the owner initiates the discussion, the licensee may inform the owner that the owner must allow the current listing to expire or obtain a mutually acceptable cancellation from the listing broker before any further discussion can take place.

11.1(3) a listing agreement shall not be assigned, sold, or otherwise transferred to another broker without the express written consent of all parties to the original agreement.

11.1(4) Net listing prohibited. No licensee shall make or enter into a net listing agreement for the sale of real property or any interest in real property. A net listing agreement is an agreement that specifies a net sale price to be received by the owner with the excess over that price to be received by the broker as commission. . .

11.1(5) a real estate licensee shall not induce another to seek to alter, modify, or change another licensee's fee or commission for real estate brokerage services without that licensee's prior written consent.

11.1(6) any commission or fee in any listing agreement is fully negotiable among the parties to that listing agreement. Once the parties to a listing agreement have agreed to a commission or fee, no licensee other than a party to the listing agreement shall attempt to alter, modify, or change or induce another person to alter, modify or change a commission or fee that has previously been agreed upon without the prior written consent of the parties to that listing agreement.

### **Problem Area: Trust Accounts.**

One of the greatest business inventions of all time is the trust account. This fiduciary account allows your money to be held in custody by another party without that person's creditors being able to levy on those funds. The broker's creditors cannot take the purchaser's earnest money from the trust account. The IRS cannot levy on the trust account (other than the broker's \$1,000 of personal money to maintain the account) to pay the broker's federal tax liability.

As can be imagined, real estate brokers have used trust funds in illegal ways. In Florida, a broker purchased a new office for his real estate company using his customer's trust money. Another broker took loans from the trust account to help finance company operations. In Los Angeles, a broker promised that she would return from a brief vacation and close all pending transactions—the broker absconded with the trust funds and was never heard from again. In another case, the salesperson was instructed by the agent to make the earnest money check payable to the agent; he used the money to finance his wedding and honeymoon. Even though he made full restitution, the regulatory agency revoked his license. One must never use trust funds in any way other than allowed by law. Let's look at Iowa's statute regarding deposition of earnest money:

1.27(1) a. All trust funds must be deposited into the broker's trust account by no later than five banking days after the date indicated on the document that the last signature of acceptance of the offer to purchase, rent, lease, exchange, or option is obtained.

### **Problem Area: Disclosure of Agency.**

Review again the Agency Disclosure section found in the first chapter of this study manual.

### **Problem Area: Maintaining inadequate transaction records.**

Regulations provide a \$2,500 penalty for failing to maintain certain transaction records. In addition to maintaining the general and individual trust account ledgers, make certain you possess the following in your files: (and keep them for a minimum of five years!)

1. Bank statements;
2. Canceled checks;
3. Copies of contracts, listings, sales, property disclosure statements, rental and leasing forms;
4. Closing statements;
5. Pertinent correspondence, and
6. Any additional items necessary to verify or explain an entry.

**Problem Area: Failing to obtain all signatures on contracts or to obtain signatures or initials of all parties to changes in a contract.**

It's always a good idea to check courthouse records for ownership; this public information will give you a good start when deciding which party should sign the listing. A lady requested her property be listed; she informed the agent she was divorced and her signature was the only signature necessary for listing the property. Unbeknownst to the licensee, she was not divorced and her husband entered a complaint against the broker with the Iowa Real Estate Commission. The Commission suggested the agent check public records for ownership. Had he completed this simple step, the obvious error could have been avoided.

When you are not certain which party should sign the listing for corporate property, comply with the corporation by-laws (Rodgers vs. Baughman). You signing the buyer's name, even with permission, can become hazardous to your real estate business (Mentzel vs. Morse).

A certain broker removed an important financing contingency from the buyer's offer and deceitfully obtained his signature on the contract. Such a dangerous change requires full disclosure; the broker was guilty of fraud.

**Problem Area: Professional Incompetency.**

The following practices by the agent may result in discipline:

- ⇒ Making misleading, deceptive, untrue or fraudulent representations or engaging in unethical conduct or a practice harmful or detrimental to the public. 543B.29(2), (3).
- ⇒ Making any substantial misrepresentation.
- ⇒ Making any false promise of a character likely to influence, persuade or induce.
- ⇒ Failing, within a reasonable time, to account for or remit any monies coming into the license's possession which belongs to others.
- ⇒ Being unworthy or incompetent to act as a real estate broker or salesperson in a manner as to safeguard the interests of the public.

The earnest money was in the form of a post-dated check; the salespersons falsely represented the earnest money as cash. When the broker learned of this discrepancy, he covered up the fact and refused to tell the seller the truth. The transaction failed and the seller was damaged financially because of the licensees' behavior. The salespersons had their licenses revoked for misrepresentation. The broker's license was also revoked for concealment. This story describes the very reason the above rules were written. These licensees could not be trusted to protect the public.

**Problem Area: A trust account shall be maintained and it shall be interest bearing.**

The broker shall not commingle personal funds with trust monies. 543B.46 (1), (4).

Most trust accounts in Iowa require the accrued interest be paid to the State of Iowa. This interest is used to fund the Iowa Title Guarantee program (newer changes to the law permit the interest to go to various



groups, charities, etc.)

You are not permitted to commingle your funds with your client's funds (exception: up to \$500 for account maintenance). Law permits you 15 days from the date of the bank statement to remedy any deficiencies in this "broker equity" ledger of the trust account. Make sure that you keep enough of your own money in the trust account to cover the expenses of maintaining the account. If your check printing charge will be automatically withdrawn from the trust account, make sure adequate funds are in the account to cover that charge.

**Summary:** Most violations come from three (3) problem areas:

1. Improper handling of trust funds.
2. Bad faith and dishonest acts.
3. Professional incompetency.

What methods may be employed to avoid these common violations?

It is imperative that you know the law. This includes the license law, rules and regulations designed to protect the public from unscrupulous real estate agents. By knowing the law, you have a prescription for trouble shooting most situations which arise in the profession of real estate. The law also includes the common law which is derived from case law originating over many years. The case law gives a practical interpretation of the license law; knowing this interpretation can sharpen your skills in the lawful marketing of real estate.

It is improper for agents to place wealth building ahead of fiduciary relations with the client. Greed is the enemy of all real estate practitioners. One should never substitute improper activities for proper legal behavior. When you have the choice of doing what is ethical over that which is deceitful, ethical behavior should win out each and every time. A broker had his license revoked in California. In proceedings to regain his license, the agent responded that he had entered the real estate business to "... Make a lot of money in a short period of time with little or no work." Needless to say, the regulatory agency thought it dangerous that a person, with these motives, be engaged in real estate sales. It is helpful to understand that selling real estate is a privilege and not a right. Real estate is a profession and, just like other professions, the license to practice this profession can be lost for unscrupulous dealings or failing to follow the law. Abuse the license; lose the license!

## **Chapter 3**

### **Play by the Rules; Business Conduct**

**Overview:** Next to the narcotics industry, it has been said that real estate brokerage has more rules and regulations than any other profession. But rules aren't all bad. Imagine any sporting event which has discarded the rules; complete bedlam, anarchy and chaos ensues. The purpose of this chapter is to explain ground rules for legal participation in the marketplace. Use this time to review guidelines which your Real Estate Commission and legislators have enacted for consumer protection.

**Learning objectives:** as a result of studying this chapter, you should be able to:

- ☒ Explain rules and regulations which govern the real estate profession.
- ☒ Recite meanings of difficult laws.
- ☒ Analyze the scope of important laws.
- ☒ Recite key time periods important for consumer protection.

#### **Broker Definition/Acts Constituting Dealing in Real Estate: 543B.3 and 6.**

Changes have occurred in the definition of a broker. It is still true that when you are selling/leasing real property for another and for consideration, that you usually need an Iowa real estate license. When a person holds herself out as a real estate agent, she is required to possess that license. Single transactions and multiple transactions still come within the scope of the law. New changes include: the buying or selling of options; the buying or selling of businesses. A licensee is able, for commission, to re-sell an option to an new owner. Licensees may sell businesses which include real property. Whether a business or an option, money accepted by the licensee needs to be deposited into the trust account.

#### **Acts Excluded From Provisions 543B.7**

An attorney-in-fact is exempt when authorizing the final consummation and execution of any contract for the selling, leasing or exchanging of real estate. Some think an attorney-in-fact is exempt from all license law and exempt from becoming a real estate licensee. Notice: the exemption is in authorizing the final consummation and execution of the transaction documents; this appears to exclude the showing and marketing of the property. Make sure the power-of-attorney is recorded at the court house; a cloud may appear on the title and delay the closing if it lacks recording. Resident managers are specifically excluded under this definition. Employees of a governmental agency may be exempt in the conduct of official duties. Employees of private utility companies are exempt in the duties they perform pertaining to company owned property.

#### **Qualifications: 543B.15**

Forgery, embezzlement, extortion, moral turpitude and conspiracy are now stated reasons for denial of a real estate license. If your professional license was revoked in another field of employment, this could be cause for license denial in real estate. The licensee must notify the real estate commission within ten (10) days of conviction of numerous offenses. (Old law said 60 days)

#### **Custody of the Salesperson's License 543B.24**

The license of a real estate salesperson shall be delivered or mailed to the real estate broker by whom the real estate salesperson is employed and shall be kept in the custody and control of the broker. If this license is returned to the regulatory agency, it is no longer necessary to send it by certified mail (although certified is a great way to do it).

#### **Display of License 543B.25**

A real estate broker shall conspicuously display, in the broker's place of business, the current real estate

broker's license issued to the broker and the licenses issued to the broker's staff. ( I think our attorney general has said they should be displayed near the office main door entrance.)

### **Change of Location 543B.32**

Notice in writing shall be given to the Iowa Real Estate Commission by each licensee of any change of principal business location, whereupon the commission shall issue a new license for the unexpired period upon the payment of a fee established by rule to cover the cost of issuing the license.

### **Insurance Requirement 543B.47**

Errors and omissions insurance is a requirement of active licensure. The licensee must comply with and prove insurance coverage each year. Inactive licensees are exempt from the requirement. A licensee shall have the option of obtaining insurance independently if the coverage contained in an independently obtained policy complies with the minimum requirements. If your license is active without E&O coverage, the regulatory agency may ask you to pay a \$1,000 voluntary compliance penalty for rule violation. Always make sure your E&O is current. Here is where one problem arises: the E&O policy renews each year; your license renews every three (3) years.

### **Real Estate Disclosures 558A 1, 2, 3, 4.**

Real estate disclosures of property condition were required beginning July 1, 1995. Residential property consisting of one to four family dwellings are covered by the law. Numerous transactions are exempt, including: divorce settlement properties; properties transferred through condemnation; inherited properties; properties transferred to a trust; properties acquired through foreclosure or deeds-in-lieu of foreclosure and properties conveyed by quit claim deed.

The disclosure is required whether or not a real estate agent is involved in the sale. The disclosure needs to be in writing. The disclosure must be delivered before each party signs the purchase agreement. If the disclosure is not timely given or received, the party has three days to withdraw from the transaction once they receive the disclosure or five days to withdraw if sent by mail. The law does not specify if the buyer can rescind the sale once the transaction has closed. Failing to file this document with the county recorder does not place a cloud on the property title. All information included in the disclosure must be disclosed in good faith. Approximations should be listed as such. If the property conditions differ from the original disclosure, amendments to the disclosure must be made. Delivery of amended disclosures is the same as the original disclosure. Information obtained from a state or governmental agency is deemed to be accurate unless parties to the transaction are aware of adverse information. Numerous items must be included in the disclosure. The required disclosure is a bare-bones disclosure; the trade association (Iowa Association of REALTORS) uses a much embellished disclosure beyond the legal minimum requirements.

### **Support Personnel for Licensees Administrative Rules 193**

#### **Activities Unlicensed Assistants Can Perform:**

- ⇒ Answer the phone, provide information about a listing to other licensees, and forward calls from the public to a licensee.
- ⇒ Submit data on listings to the multiple listing service.
- ⇒ Check on the status of loan commitments after a contract has been negotiated.
- ⇒ Assemble documents for closing.
- ⇒ Secure documents that are public information from the courthouse and other sources available to the public.
- ⇒ Have keys made for company listings.
- ⇒ Write advertisements and promotional materials for the approval of the licensee and supervising broker.
- ⇒ Place advertisements in magazines, newspapers, and other media as directed by the supervising broker.

- ⇒ Record and deposit earnest money, security deposits and advance rents.
- ⇒ Type contract forms as directed by the licensee or the supervision broker; monitor personal files.
- ⇒ Compute commission checks.
- ⇒ Place signs on property.
- ⇒ Order items of routine repair as directed by licensee.
- ⇒ Act as courier for such purposes as delivering documents or picking up keys; the licensee remains responsible for ensuring delivery of all executed documents required by Iowa law and commission rules.
- ⇒ Schedule appointments with the seller or the seller's agent in order for a licensee to show a listed property.
- ⇒ Arrange dates and times for inspections.
- ⇒ Arrange dates and times for the mortgage application, the preclosing walk-through and the closing.
- ⇒ Schedule an open house.
- ⇒ Perform physical maintenance on a property.
- ⇒ Accompany a licensee to an open house or a showing and perform the following functions as a host or hostess:
  1. Open the door and greet prospects as they arrive.
  2. Hand out or distribute prepared printed material.
  3. Have prospects sign a register or guest book to record names, addresses and telephone numbers.
  4. Accompany prospects through the home for security purposes and not answer any questions pertaining to the material aspects of the house or its price and terms.

**Activities Unlicensed Assistants Cannot Perform:**

**Unauthorized activities include:**

- ⇒ Making cold calls by telephone or in person or otherwise contacting the public for the purpose of securing prospects for listings, leasing, sales, exchanges or property management.
- ⇒ Independently hosting open houses, kiosks (summer house/pavilion), home show booths or fairs independently.
- ⇒ Preparing promotion materials or advertisements without the review and approval of licensee and supervising broker.
- ⇒ Showing property independently.
- ⇒ Answering any questions on title, financing, or closing (other than time and place).
- ⇒ Discussing or explaining a contract, listing, lease agreement or other real estate document with anyone outside the firm.
- ⇒ Negotiating or agreeing to any commission, commission split, management fee or referral fee on behalf of a licensee.
- ⇒ Discussing with the owner of real property the terms and conditions of the real property offered for sale or lease.
- ⇒ Collecting or holding deposit monies, rent, other moneys or anything of value received from the owner of real property or from a prospective buyer or tenant.
- ⇒ Providing owners of real property or prospective buyers or tenants with any advice, recommendations or suggestions as to the sale, purchase, exchange, rental or leasing of real property that is listed, to purchase, exchange, rental or leasing of real property that is listed, to be listed or currently available for sale or lease; or
- ⇒ Holding one's self out in any manner, orally or in writing, as being licensed or affiliated with a particular firm or real estate broker as a licensee.

**193 (543B) Information provided by nonlicensed support personnel restricted.**

Nonlicensed support personnel may, on behalf of the employer licensee, provide information concerning

the sale, exchange, purchase, rental, lease, or advertising of real estate, only to another licensee. Support personnel shall provide information only to another licensee that has been provided to them by the employer licensee either verbally or in writing. Support personnel shall provide the information only to another licensee.

When reviewing situations regarding unlicensed assistants, the Iowa Real Estate Commission will look at the answers to the following questions:

- ⇒ Was the broker physically able to supervise?
- ⇒ Had the broker contracted to avoid the responsibilities of supervision?
- ⇒ In what type of activity was the unlicensed assistant engaged?
- ⇒ Had the broker established written policies and procedures to guide both licensed and unlicensed personnel associated with the firm?
- ⇒ Did the broker try to prevent violations of the statute or regulations?
- ⇒ Did the broker try to avoid learning about a violation?

This compilation is not intended to be applied universally in all circumstances; the Iowa Real Estate Commission advises you to consult an attorney when in doubt. A licensee and a licensee's broker should be careful that an assistant performs no brokerage activity unless the assistant obtains a license.

**Be alert to other areas such as:**

When advertising in your own name, make sure that you are the owner of the property being advertised. A good ethical practice would be to disclose, in the ad, that you are a licensee. The ad might be titled: "For sale by owner/broker. . .," to put the public on notice that they are dealing with one who derives their income from real estate sales/leasing. This would apply to most every type of transaction in real estate including: Personal sales, rentals, or exchanges on which no brokerage fees are paid.

When required by any party to the transaction, the licensee must produce progress reports. Reports will serve to update the parties on the transaction and needs to be given when requested at agreed intervals until the transaction has closed. It would be logical that if funds are held until certain work is completed, the licensee should continue to give status reports until the release of the escrowed funds.

The protective clause protects licensee for commissions when a prospective purchaser decides to buy the property directly from the seller after listing expiration. To make this clause enforceable, the broker must give the buyer's name and contact information (old law said: buyer's address) to the seller before the listing expires. The protected list of prospective buyers may be personally served on the seller or mailed. If personal service is used, a signed receipt must be obtained. If mailed, it must be mailed by certified mail (return receipt requested but restricted certified mail is not required but would be a great idea) and regular mail. In my files, I have over 100 supreme court battles between sellers and brokers over protective clause disputes; these cases, from all over the United States, demonstrate the problems resulting from inadequate fulfillment of protective clause requirements. Follow the law perfectly and hopefully the court will pay your commission.

Iowa statutes permit you ten (10) calendar days to make corrections to errors in advertising. Advertising should never be misleading or false. The broker is ultimately responsible for all ads; the salesperson should submit all copy to the broker for approval. An old case I studied went this way: licensees found they could generate more phone calls from ads by replacing their company name with "for sale by owner." The results were staggering but the method deceptive. This technique was soon prohibited by regulatory agencies as wrongful advertising. Real estate advertising shall not be misleading, deceptive, or intentionally misrepresent any property, terms of sale, property values, or policies or services of the brokerage.



All purchase agreements must be presented promptly. Rules and Reg.'s provide for fines up to \$2,500 per violation for failing to immediately present all offers. Both "promptly" and "immediately" are used when describing offer presentations; I prefer the practice of presenting offers "instantly." *Instantly* presenting offers could solve some of the problems experienced by licensees who unnecessarily delay offer presentations. *Promptly* and *immediately* are normally judicially interpreted as meaning "within 24 hours"; *instantly* means right away and right now. *Instantly* may be your goal but may not be practical in every situation. Once the offer is presented, the seller's response must be promptly and immediately communicated back to the purchaser.

When closing transactions, make sure that all parties receive closing statements accurately reflecting transaction costs. A copy of this statement must be kept in the closing file for five (5) years. It is always the listing broker who has the option of closing the transaction. In that event, the selling broker should deliver the earnest money to the listing broker for disbursement. Certain care must be taken when the selling broker receives cash as earnest from the buyer and when the listing broker has elected to close. A salesperson may close the transaction when having permission or supervision from her broker.

Certain prohibited practices are outlawed by the rules and regulations. "Tying" is a practice whereby the licensee attempts to make one transaction contingent upon another. An example: broker Cheatum agrees to present the buyer's offer on a certain property, but only *if* the buyer lists his home with broker Cheatum. The broker is using the seller's property to gain more profit, a double commission, for the broker; this profit was not provided for in the listing. A second example: a banker cannot condition loan approval upon the mortgagor's purchase of the subject property through the banker or associated broker entity.

When a broker's license is suspended or revoked, the broker must cease all activity sanctioned by that license, and, as of the effective date of the suspension. Salespersons of the broker are automatically placed on "inactive status" and their licenses are to be returned to the real estate commission. Compensation earned before the effective date of the revocation may be received by the broker. All principals must be placed on notice of this disciplinary action which may allow them to enter contracts with other firms. Any "hint" of being in the real estate brokerage business must be removed during this period of discipline including: the telephone must be answered in a different manner; billboards must be covered over; for-sale signs must be removed; uniforms showing sponsorship of athletic teams must be redesigned, etc."

Licensees must never receive "finder's fees" or "kick-backs" from lenders. This "kick-back" system was used in the earlier part of the 20th Century to reward real estate agents for bringing prospective mortgagors to the lender. Because the consumer may not be receiving the most economical credit fees available, such practices are prohibited as being "not in the best interest of the public" or predatory. "Predatory practices" are against the best interest of the public. Examples which might be predatory include lenders: preying upon certain types of purchasers: which may not be able to afford the loan; using language to describe loans to borrowers which are hard to understand; giving free golf outings to agents bringing borrowers to the lender; giving free or reduced office rental space to real estate agents which bring them prospective mortgagors; giving free photocopy service to agents which . . . and the list goes on. . .

The licensee must distribute executed documents as required by statute. Whenever a buyer or seller signs their name to any document, it is required that you give them a copy of the document as soon as practical. Before modern changes to the law, we were required to give the copy as soon as they signed the document. Here's how it worked. Carbon paper was interwoven between the five (5) copies of the

sales contract. We left copy #1 with the purchaser when she signed. Copy #2 was given to the seller when he signed. Copy #3, now with both parties signatures, was delivered back to the purchaser. Copy #4 was kept in the broker's files for the required five years. Copy #5 was for the lender if financing was a contingency. I think carbon paper is still available in office supplies stores. Today, make certain you give clients and customers copies of what they sign as soon as practical.

A licensee must disclose to a client any financial interest the licensee or brokerage has in any business entity to which the licensee or brokerage refers a client for any service or product related to the transaction. The statutes indicate a hurdle-rate ownership of more than 1% and includes those related to the licensee by blood, marriage, adoption and/or business entity. If in doubt, disclose the financial interest; make the client alert to the fact that you might benefit financially through referral of business. Read the statutes included with this book; take the sample disclosure to your lawyer for a determination that the disclosure will give full protection. Be sensitive to any additions your lawyer may suggest to make the disclosure *tight*.

Every Iowa resident real estate firm or self-employed broker shall maintain an office for the transaction of business in the state of Iowa which shall be open to the public during business hours or by appointment. It is permissible for different real estate companies to share office space but all records, trust account records, etc., must be maintained separately. Branch offices must be managed by a broker who is not managing any other office. Special licenses are required for branch offices. When closing the business, notification must be given to all clients informing them of the closure date permitting them to contract listing agreements with another broker. A broker managing a branch office has the same responsibility and liability for supervising salespersons as is imposed on the sponsoring broker.

The employing broker is responsible for supervising the sales staff. This responsibility for supervising covers employees and independent contractors. The sales staff must keep the broker informed of all activities. Failure of the staff to keep the broker informed does not mitigate the broker's responsibility under the law.

The Iowa Real Estate Commission will not settle feuds between licensees over compensation splits or earned commissions. (Florida Real Estate Commission will resolve issues among her licensees; Iowa will not.) The licensees must look to their local board of REALTORS, enter the courts or take other actions to resolve the matter.

#### **BROKERAGE AGREEMENTS CONTENTS (Iowa Code 543B.56A)**

A brokerage agreement shall specify that the broker shall, at a minimum, do all of the following:

- Accept delivery of and present to the client offers and counteroffers to buy, sell, rent, lease, or exchange the client's property or the property the client seeks to purchase or lease.
- Assist the client in developing, communicating, negotiating, and presenting offers or counter offers until a rental agreement, lease, exchange agreement, offer to buy or sell, or purchase agreement is signed and all contingencies are satisfied or waived and the transaction is completed.
- Answer the client's questions relating to the brokerage agreements, listing agreements, offers, counteroffers, notices, and contingencies. Provide prospective buyers access to listed properties.

#### **RESTRICTIONS ON PAYMENT OF COMMISSION TO OTHERS (Iowa Code 543B.60A)**

A licensee shall not request a referral fee after a bona fide offer to purchase is accepted or listing agreement has been signed. The purpose of this law is to prohibit licensees from interfering with contractual arrangements, placing improper restrictions on consumer choice and/or compromising a licensee's fiduciary obligation or creating a conflict of interest.



This section does not pertain to licensees of the same real estate company. This section defines a “consumer” as a client or prospective client or customer or prospective customer. Call your attorney for an interpretation of the following provisions of this statute: “Iowa Code 543B.56A (3). A licensee shall not offer, promote, perform, provide, or otherwise participate in any marketing plan that requires a consumer to receive brokerage services, including referral services, from two or more licensees in a single real estate transaction, as a required condition for the consumer to receive either of the following: A. Brokerage services from one or more of such licensees. B. A rebate, prize, or other inducement from one or more such licensees.”

## **Other Important Rules and Reg.’s**

### **193E—11.3(543B) Brokerage agreements.**

**11.3(6) Compensation.** In any real estate transaction, the broker’s compensation may be paid by the seller, the buyer, the landlord, the tenant, a third party, or by the sharing or splitting of a commission or compensation between brokers.

a. Payment of compensation shall not be construed to determine or establish an agency relationship. The payment of compensation to a broker does not determine whether a brokerage relationship has been created between any broker and a seller, landlord, buyer, or tenant paying such compensation.

...

i. The provisions of these rules do not apply to a gratuitous gift, such as flowers or a door knocker, to a buyer or tenant subsequent to closing and not promised or offered as an inducement to buy or lease, as long as any client relationship has terminated.

j. The provisions of these rules do not apply to a free gift, such as prizes, money, or other valuable consideration, to a potential party to a transaction or lease prior to the parties’ signing a contract to purchase or lease and not promised or offered as an inducement to sell, buy, or lease, as long as no client relationship has been established with the buyer or lessee.

### **193E—7.15(543B) Presenting purchase agreements.**

**7.15(5)** A listing agent shall not refuse to permit a customer’s agent or representative to be present at any step in a real estate transaction including, but not limited to, viewing a property, seeking information about a property, or negotiating directly or indirectly with an agent about a property listed by such agent; and no agent shall refuse to show a property listed by that agent or otherwise deal with a represented customer who requests that the customer’s agent or representative be present at any step in the real estate transaction, except as provided in this subrule.

a. The customer’s agent or representative does not have the right to be present at any discussion of confidential matters or evaluation of the offer by the seller and the listing agent.

b. Unless the seller provides written instructions to the listing agent to exclude a customer’s agent or representative from being present when the offer is presented, it is not unlawful for the customer’s agent or representative to be present.

c. Compliance with this rule does not require or obligate a listing broker to share any commission or to otherwise compensate a customer’s agent.

## Chapter 4

### The Disciplinary Process

**Overview:** The removal of your license to engage in a profession by administrative action is one of the most drastic proceedings known to the law. At one stroke of the pen it takes away your means of livelihood and casts an immediate blight upon your whole life, family and business. This chapter describes the discipline and hearing procedure. Because you have acquired your real estate license through struggle and sacrifice, you should know your rights under the law should you be found in jeopardy. This chapter reveals the licensee's rights under the hearing procedure. Now it can be said: "Ignorance of one's own rights is no excuse!"

**Learning objectives:** After studying this chapter, you should be able to:

- ☒ List many methods of discipline available to the Iowa Real Estate Commission.
- ☒ Analyze key factors the Commission may consider before taking action against a licensee.
- ☒ State your rights during a disciplinary hearing.

#### Applicable Laws 543B

Iowa Law provides numerous reasons for having one's license revoked or suspended. Reasons for revocation or suspension include fraud in procuring a license, professional incompetency, misrepresentation of many types, conviction of numerous acts (e.g., forgery, embezzlement, moral turpitude, etc.), failing to maintain errors and omissions insurance, trust account violations and other acts.

The Iowa Real Estate Commission may investigate the activities of licensees for violations of the above activities, including: paying a commission to a non-licensee; undisclosed dual agency; incompetency; representing a broker other than the licensee's and others. The Commission may investigate upon its own motion which appears to be a prima-facia complaint or the verified written complaint by anyone.

The licensee may be heard at his hearing in person or by legal counsel. The Commission must give the licensee a minimum of 20 days to prepare for the hearing. An informal hearing must take place at least 5 working days before the hearing. The Iowa Attorney General is the prosecuting attorney; the real estate commissioners comprise the jury. You must approve of any other person present during the hearing. Witnesses may be called by the Commission for the hearing. If the witness disobeys the Commission's subpoena to appear, they may invoke the aid of a court. Violation of a court order to appear would be punishable as a contempt of court. The Commission must issue a finding of fact at the end of the hearing. Judicial review, starting with an administrative law judge (A.L.J.), of the finding may be sought should the licensee disagree with the Commission's findings. Further challenges may be brought to the District Court, the Iowa Court of Appeals and the Iowa Supreme Court. All of the preceding derives from your constitutional right of due process.

#### Administrative Rules

An investigation committee may be formed by two to seven members of the Commission. The form of the complaint must be in writing including information about the person initiating the complaint, the licensee complained about and concisely stated charges against the licensee. If the complaint is frivolous, no further action may be taken. Challenges may be raised in this situation. The investigation committee may take various actions including informal settlements. If the licensee fails to appear at the hearing, the Commission may conduct the hearing in the absence of this licensee. The licensee may be bound by the decision of the Commission subject to rights of review and appeal.

### **Methods of Discipline.**

The Iowa Real Estate Commission has authority to impose, after proper procedures have been initiated, the following actions:

1. Revocation of a license.
2. Suspension of a license for a period of time or indefinitely.
3. Nonrenewal of a license.
4. Prohibit permanently, until further order of the commission, or for a specified period of time, the engagement in specified procedures, methods or acts.
5. Probation. As a condition to a period of probation, the commission may impose terms and conditions deemed appropriate by the commission including, but not limited to, substance abuse evaluation and such care and treatment as recommended in the evaluation or otherwise appropriate under the circumstances.
6. Require additional continuing education. The Commission may specify that a designated amount of continuing education be taken in specific subjects and may specify the time period for completing these courses. The Commission may also specify whether this continuing education be in addition to the continuing education routinely required for license renewal. The Commission may also specify that additional continuing education be a condition for the termination of any suspension or reinstatement of a license.
7. Require re-examination.
8. Impose a monitoring or supervision arrangement.
9. Downgrade a license from a broker license to a salesperson license.
10. Issue a reprimand.
11. Order a physical or mental examination with periodic reports to the Commission, if deemed necessary.
12. Impose civil penalties, the amount of which shall be at the discretion of the Commission, but which shall not exceed \$2,500 per violation. Civil penalties may be imposed for any of the disciplinary violations specified in rule 193E-18.2 (17A, 272C, 543B) and as listed in 18.18(5).

The following factors are among those which may be considered by the Commission in determining the nature and severity of the disciplinary sanction to be imposed against a particular licensee or groups of licensees.

1. The relative seriousness of the violation as it relates to assuring the citizens of this state professional competency.
2. The facts of the particular violation.
3. Number of prior violations.
4. Seriousness of prior violations.
5. Whether remedial action has been taken.
6. The impact of a particular activity upon the public.
7. Such other factors as may reflect upon the competency, ethical standards and professional conduct of the licensee, including those listed in 18.14(6).

A civil penalty of up to \$2,500 may be imposed for violations. Violations for which civil penalties may be imposed:

1. Engaging in activities requiring a license when license is inactive.
2. Failing to maintain a place of business.
3. Improper care and custody of license:
  - A. Failing to properly display license(s).
  - B. Failing to return license in a timely manner (72 hours).
  - C. Failing to notify associate when license is returned.

Special numbers/times	Significance
> 1%	Special disclosure must be made to certain parties to a transaction if you refer them to any business in which you have a greater than 1% ownership interest.
36 hours	Minimum number of continuing education hours to renew a license into active status
72 hours	Deadline for returning the salesperson license to the real estate commission when the salesperson is fired or quits
5 banking days	Deadline for depositing trust funds into the trust account
5 working days	Deadline for notifying the Iowa Real Estate Commission regarding change of business address, personal residence address or change in form of ownership of the broker's office
10 calendar days	Deadline for correcting erroneous advertising
14 calendar days	Deadline for communicating information to the Iowa Real Estate Commission concerning a complaint
20 days	The shortest period of time before a licensee may have a hearing by the Iowa Real Estate Commission after notification of the hearing.
30 days 30 days	Deadline for filing for hearing regarding application denials (1st 30 days) Deadline for grace period after December 31 license expiration deadline
Monthly	The trust account must be reconciled monthly (or at intervals at which bank statements are received)
60 days (change to 10 days) 60 days	Deadline to notify the Iowa Real Estate Commission about any conviction of fraud, embezzlement or crime. Your application for license will ask for your job experience in the past five years where you have worked for at least 60 days.
6 months 6 months	Your passing test results are valid for this time period. 6 months before your license expires, you may re-pass the real estate exam instead of completing continuing education.
Quarterly	Intervals for transferring interest from trust accounts to the state of Iowa.
1 year Annually	Your completion certificate from your real estate salesperson real estate class is valid for this time period. Property management trust accounts must be reported to the owner at least annually.
2 years (24 months)	Minimum time as a salesperson before becoming a broker Pre-broker classes are valid for two years.
3 years 3 years	Unclaimed trust funds escheat to the State of Iowa after 3 years. A former licensee must make an original application for salesperson if their real estate license lapsed for longer than this period of time
5 years	All documents pertaining to real estate transactions must be kept for at least this long.
Immediately/promptly	Deadline for presenting all offers. Deadline for communicating results of the offer presentation to party making offer.
Reasonable intervals	If requested of the licensee, the period between transaction progress reports( formerly was 30 days)
\$1,000	The maximum amount of money in the trust account which may be owned by the broker.
\$2,500	Maximum civil fine, per violation, which can be levied by the Iowa Real Estate Commission

4. failing to inform Commission and remit required fees if appropriate:
  - A. When changing business address (5 working days).
  - B. When changing status (5 working days).
  - C. When changing form of firm (5 working days).
  - D. When opening a trust account by not filing a consent to examine for the account.
  - E. When changing residence address or mailing address (5 working days).
  - F. When independently obtained errors and omissions insurance status, coverage or provider changes (5 working days).
5. Maintaining inadequate transaction records such as:
  - A. Failing to maintain a general ledger.
  - B. Failing to maintain individual account ledgers.
  - C. Failing to retain records on file.
6. Improper trust account and closing procedures:
  - A. Failing to deposit funds as required.
  - B. Disbursing trust funds prior to closing without written authorization.
  - C. Withholding earnest money unlawfully when the transaction fails to consummate.
  - D. Failing to obtain escrow agreement for undisbursed funds.
  - E. Failing to remit and account for interest on closing statements.
  - F. Computing closing statements improperly.
  - G. Failing to provide closing statements.
  - H. Retaining excess personal funds in the trust account.
  - I. Failing as a salesperson or broker associate to immediately turn funds over to the broker.
  - J. Failing to deposit trust funds in interest-bearing account in accordance with Iowa Code Section 543B.46.
  - K. Failing to account for and remit to the state accrued interest due in accordance with Iowa Code section 543B.46.
7. Failing to immediately present offer.
8. Advertising without identifying broker or clearly indicating advertisement is by a licensee.
9. Failing to provide information to the Commission when requested relative to a complaint (14 calendar days).
10. Failing to obtain all signatures required on contracts or to obtain signatures or initials of all parties to changes in a contract.
11. Placing a sign on property without consent, or failure to remove a sign when requested.
12. Failing to furnish a progress report when requested.
13. Failing by a broker to supervise salespersons or broker associates.
14. Failing by a broker associate or salesperson to keep the employing broker informed.
15. Issuing an insufficient fund check to the Commission for any reason or to anyone else in the individual's capacity as a real estate licensee.
16. Issuing an insufficient fund check on the broker's trust account.
17. Engaging in conduct which constitutes a tying arrangement as prohibited by these rules.
18. Failing to inform clients of real estate brokerage firm the date the firm will cease to be in business and the effect upon sellers' listing agreements.
19. Violating any of the remaining provisions in 193E—Chapters 1 to 20 inclusive, which have not heretofore been specified in this rule.