

## **REAL ESTATE COMMISSION [193E]**

### **Notice of Intended Action**

The Iowa Real Estate Commission hereby proposes to amend 193-Chapter 11 “Brokerage Agreements”, Iowa Administrative Code.

#### *Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in 543B.18.

#### *State or Federal Law Implemented*

This rulemaking implements, in whole or in part, 544B, 2024 Iowa Acts, House File 2326, 2394, 2291 and 17A.

#### *Purpose and Summary*

This proposed rulemaking complies with 2024 Iowa Acts, House File 2291. The amendments set forth supporting guidance to licensees regarding brokerage agreements.

#### *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 Commission for a waiver of the discretionary provisions, if any, pursuant to IAC 481-Chapter 6.

#### *Public Comment*

Any interested person may submit 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 . Comments should be directed to:

### *Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held as follows:

March 11, 2025  
1:30 p.m.

6200 Park Avenue, Suite 100  
Des Moines, Iowa

Zoom:[https://www.google.com/url?q=https://meet.google.com/zqb-qnex-nyz?hs%3D224&sa=D&source=calendar&ust=1738508446896781&usg=AOvVaw33NjiJRIdKLe\\_7BeDF9YXp](https://www.google.com/url?q=https://meet.google.com/zqb-qnex-nyz?hs%3D224&sa=D&source=calendar&ust=1738508446896781&usg=AOvVaw33NjiJRIdKLe_7BeDF9YXp)

Persons who wish to make oral comments at the 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 the 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 proposed:

ITEM 1. Amend rule 193E-11.1(543B) and adopt 193E-11.1(a) and (b) as follows:

193E—11.1(543B) Listing Brokerage agreements. All listing brokerage agreements ~~are~~ will 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, commission~~ amount of compensation to be paid with disclosure that states compensation is negotiable and not set by law, the signatures of all parties concerned and a definite expiration date not to exceed one calendar year in length from the effective date for all properties. The agreement contains no provision requiring a party signature to extend the agreement after such definite expiration date. ~~The agreement contains 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 brokerage agreement or exclusive right to sell listing agreement clearly indicates that it is such an agreement. A legible copy of every written listing brokerage agreement or other written authorization is given to the ~~owner of the property~~ client by a licensee as soon as the signature of the ~~owner~~ client is obtained.

a. A listing agreement should properly identify the property and contain the terms and conditions under which the property is to be sold, including but not limited to the list price and any compensation to be earned from the sale of the property.

b. A buyer representation agreement is required for all properties. Open houses or auctions are exempt from usage of a buyer representation agreement.

ITEM 2. Amend rule 193E-11.1(543B) as follows:

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

a. However, if the ~~owner~~ buyer or seller 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 brokerage agreement.

b. If the ~~owner~~ buyer or seller initiates the discussion, the licensee may inform the ~~owner~~ buyer or seller that the ~~owner~~ buyer or seller needs to allow the current listing brokerage agreement to expire or obtain a mutually acceptable cancellation from the ~~listing~~ broker before any further discussion can take place.

ITEM 3. Amend subrule 193E-11.1(2)(543B), adopt subrule 193E-11.1(3) and renumber as follows:

11.1(2) A real estate licensee cannot negotiate a sale, exchange, or lease of real property directly with an ~~owner~~ seller if it is known that the ~~owner~~ seller has a written unexpired contract in

connection with the property which grants an exclusive right to sell to another broker, ~~or which grants an exclusive agency to another broker.~~

11.1(3) A real estate licensee cannot negotiate a sale, purchase, exchange, or lease of real property directly with a buyer or seller if it is known that the buyer seller has a written unexpired exclusive brokerage agreement with another broker.

~~11.1(3 4) A listing agreement cannot be assigned, sold, or otherwise transferred to another broker without the express written consent of all parties to the original agreement. All brokerage agreements are written and cannot be assigned, sold, or otherwise transferred to another broker without the express written consent of all parties to the original agreement, unless the terms of the agreement state otherwise. Upon termination of association or employment with the principal broker, the affiliated broker associate or salesperson cannot solicit, take, or use any written brokerage agreements secured during the association or employment. Said brokerage agreements remain the property of the principal broker and may be canceled only by the broker and the client.~~

11.1(~~4~~5) Net listing barred. No licensee makes or enters 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~~ compensation. The taking of a net listing is unprofessional conduct and constitutes a violation of Iowa Code sections 543B.29(3) and 543B.34(8).

ITEM 4. Rescind subrule 193E-11.2(543B).

ITEM 5. Rescind subrule 193E-11.3(543B).

ITEM 6. Amend and renumber subrule 193E-11.3(543B) as follows:

~~193E—11.3 2(543B) Brokerage agreements. All brokerage agreements are written and cannot be assigned, sold, or otherwise transferred to another broker without the express written consent of all parties to the original agreement, unless the terms of the agreement state otherwise. Upon termination of association or employment with the principal broker, the affiliated broker associate or salesperson cannot take or use any written brokerage agreements secured during the association or employment. Said brokerage agreements remain the property of the principal broker and may be canceled only by the broker and the client.~~

11.3 2(1) Every written brokerage agreement includes, at a minimum, the criteria set forth in Iowa Code section 543B.576a and the following provisions:

- a. ~~All~~ Brokerage agreements will contain a statement disclosing the brokerage policy on cooperating with and compensating other brokerages or the other parties' agent in the sale, lease, rental, or purchase of real estate, including whether the brokerage intends to ~~share~~ split the compensation with other brokerages and any other method for negotiating compensation for another party's broker. Such disclosure serves to inform the client of any policy that would limit the participation of any other brokerage; and

b. All ~~listing contracts and all~~ brokerage agreements ~~agency contracts~~ comply with Iowa real estate law and commission rules including, but not limited to, rules 193E—11.1(543B) and 193E—11.4(543B) and 193E—Chapter 15.

~~11.3(2) No licensee makes or enters into a brokerage agreement that specifies a net sale, lease, rental, or exchange price to be received by an owner and the excess to be received by the licensee as a commission.~~

~~11.3(3) The taking of a net brokerage agreement is unprofessional conduct and a practice that is harmful or detrimental to the public and constitutes a violation of Iowa Code sections 543B.29(3) and 543B.34(8).~~

11. ~~3(4)~~ 2(2) Duration of relationship. The relationships commence at the time of the brokerage agreement and continue until closing of the transaction or performance or completion of the agreement by which the broker was engaged within the term of the agreement and not exceeding twelve (12) months. If the transaction does not close, or the agreement for which the broker was engaged is not performed or completed for any reason, the relationship ends at the earlier of the following:

- a. ~~The~~ Any date of expiration agreed upon by the parties; or
- b. Any termination by written agreement of the parties.

11. ~~3(5)~~ 2(3) Obligation terminated. In addition to any continuing duty or obligation provided in the written agreement or pursuant to Iowa law and commission rules, a broker or brokerage engaged as a seller's or landlord's agent, buyer's or tenant's agent, ~~subagent~~, or dual agent and affiliated licensees have the duty after termination, expiration, completion, or performance of the brokerage agreement to:

- a. Account for all moneys and property related to and received during the engagement; and
- b. Keep confidential all information received during the course of the engagement which was made confidential by request or instructions from the engaging party or is otherwise confidential by statute or rule.

11. ~~3(6)~~ 2(4) 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 the sharing or splitting of a commission or~~ compensation between brokers.

- a. Payment of compensation is not to 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.
- b. Written permission of the client is needed as follows:

(1) A seller's or landlord's agent may ~~share the commission or other~~ split compensation paid by such seller or landlord with another broker, with the written consent of the seller or landlord.

(2) A buyer's or tenant's agent may ~~share the commission or other~~ split compensation paid by such buyer or tenant with another broker, with the written consent of the buyer or tenant.

(3) Without the written approval of the client, a seller's or landlord's agent cannot propose to the buyer's or tenant's agent that such seller's or landlord's agent may be compensated by ~~sharing~~ splitting compensation paid by such buyer or tenant.

(4) Without the written approval of the client, a buyer's or tenant's agent cannot propose to the seller's or landlord's agent that such buyer's or tenant's agent may be compensated by ~~sharing~~ splitting compensation paid by such seller or landlord.

c. A broker may be compensated by more than one party for services in a transaction.

d. A licensee cannot accept, receive or charge an undisclosed ~~commission~~ compensation for a transaction.

e. A licensee cannot give or pay an undisclosed ~~commission~~ compensation to any other licensee for a transaction, except payment for referrals to other licensees, including franchise affiliates, to provide real estate brokerage services, if there is no direct or beneficial ownership interest of more than 1 percent in the business entity providing the service.

f. A licensee cannot pay any undisclosed rebate to any party to a transaction.

g. A licensee cannot give any undisclosed credit against ~~commission~~ compensation due from a client or licensee to any party to a transaction.

h. A licensee cannot accept, receive or charge any undisclosed payments for any services provided by any third party to any party to a transaction including, but not limited to, payments for procuring insurance or for conducting a property inspection related to the transaction.

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.

k. The seller or landlord may authorize a portion of the proceeds of the sale of real property or other negotiated term of an agreement or contract to pay compensation to other brokers who are part of the same real estate transaction as the seller or landlord, including a buyer's or tenant's broker solely representing the buyer or tenant. The payment of compensation may be a direct payment from the seller or landlord to the other brokers who are part of the same real estate transaction as the seller or landlord, including a buyer's or tenant's broker solely representing the buyer or tenant.

~~11.3(7) Solicitation of brokerage agreements. A licensee cannot advise, counsel, or solicit a brokerage agreement from a seller or buyer, or landlord or tenant, if the licensee knows, or acting in a reasonable manner should have known, that the seller or buyer, or landlord or tenant, has contracted with another broker for the same brokerage services on an exclusive basis.~~

~~a. This rule does not preclude a broker from entering into a brokerage agreement with a seller or buyer, or landlord or tenant, when the initial contact is initiated by the seller or buyer, or landlord~~

~~or tenant, and the licensee has not directly or indirectly solicited the discussion, provided the brokerage agreement does not become effective until the expiration or release of the current brokerage agreement.~~

~~b. A brokerage agreement cannot be assigned, sold, or otherwise transferred to another broker without the express written consent of all parties to the original agreement.~~

11. ~~3(8)~~ 2(5) Any ~~commission~~ compensation or fee in any brokerage agreement is fully negotiable among the parties to that brokerage agreement. Once the parties to a brokerage agreement have agreed to a ~~commission~~ compensation or fee, no licensee other than a party to that brokerage agreement attempts to alter, modify, or change or induce another person to alter, modify, or change a ~~commission~~ compensation or fee that has previously been agreed upon without the prior written consent of the parties to that brokerage agreement.

11. ~~3(9)~~ 2(6) The seller or landlord may, in the brokerage agreement, authorize the seller's or landlord's broker to disburse part of the broker's compensation to other brokers, including a buyer's or tenant's broker solely representing the buyer or tenant.

11. ~~3(10)~~ 2(7) Nothing contained in this rule shall obligate any buyer or tenant or seller or landlord to pay compensation to a licensee representing the buyer or tenant or seller or landlord in a real estate transaction unless the buyer or tenant or seller or landlord has entered into a written brokerage agreement with the broker specifying the compensation terms and conditions, in accordance with Iowa real estate license law and commission rules.

ITEM 7. Amend and renumber subrule 193E-11.4(543B) as follows:

~~11.4~~ 3 (543B) Terms or conditions. A licensee cannot write, prepare or otherwise use a contract containing terms or conditions that would violate real estate laws in Iowa Code chapter 543B or commission rules. The broker is responsible to ensure that all preprinted documents and forms used ~~are in compliance with~~ follow these rules.

ITEM 8. Renumber subrule 193E-11.5(543B) as follows:

193E—~~11.54~~ 11.5 (543B) Distribution of executed instruments. Upon execution of any instrument in connection with a real estate transaction, a licensee, as soon as practicable, delivers a legible copy of the original instrument to each of the parties thereto. It is the responsibility of the licensee to prepare sufficient copies of such instruments to satisfy this criteria. The broker retains copies for five years.

ITEM 9. Adopt subrule 193E-11.5(543B) as follows:

193E—11.5 (543B) Enforcing a protective clause. To enforce a protective clause beyond the expiration of an exclusive brokerage agreement, there must be a provision for the protective clause in the brokerage agreement which establishes a definite protection period. In writing and prior to the expiration of the brokerage agreement, the broker furnishes to the party the names and available contact information of persons to whom the property was presented or a list of each property that was shown during the active term of the brokerage agreement and for whom protection is sought. Delivery is by personal or electronic service with written acknowledgment of

receipt, or by regular mail or certified mail postmarked prior to the expiration of the brokerage agreement, return receipt requested.

ITEM 10. Amend subrule 193E-11.6(1)(543B) as follows:

11.6(1) A licensee cannot pay ~~a~~commission compensation, any part of a ~~commission compensation~~, or valuable consideration to an unlicensed third party for performing brokerage functions or engaging in any activity that needs a real estate license. Referral fees or finder's fees paid to unlicensed third parties for performing brokerage activities, or engaging in any activity that needs a real estate license, are barred.

ITEM 11. Amend subrule 193E-11.6(2)(543B) as follows:

11.6(2) In a brokerage agreement, the broker is principal party to the contract. The broker may, with proper disclosure, pay a portion of the ~~commission~~ commission compensation earned to an unlicensed seller, landlord, buyer, or tenant that is a principal party to the brokerage agreement. This will be deemed a reduction in the amount of the earned ~~commission~~ commission compensation.