

IOWA REAL ESTATE COMMISSION

CODE OF IOWA

CHAPTER 543B

REAL ESTATE BROKERS & SALESPERSONS

AND

CHAPTER 558A

REAL ESTATE DISCLOSURES

Telephone: 515/281-7393

CHAPTER 543B

REAL ESTATE BROKERS & SALESPERSONS

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IOWA REAL ESTATE COMMISSION

CODE OF IOWA CHAPTER 543B

REAL ESTATE BROKERS & SALESPERSONS

543B.1 License mandatory.

A person shall not, directly or indirectly, with the intention or upon the promise of receiving any valuable consideration, offer, attempt, agree to perform, or perform any single act as a real estate broker whether as a part of a transaction or as an entire transaction, or represent oneself as a real estate broker, broker associate, or salesperson, without first obtaining a license and otherwise complying with the requirements of this chapter.

543B.2 Individual licenses necessary.

A partnership, association, or corporation shall not be granted a license, unless every member or officer of the partnership, association, or corporation who actively participates in the brokerage business of the partnership, association, or corporation, holds a license as a real estate broker or salesperson, and unless every employee who acts as a salesperson for the partnership, association, or corporation holds a license as a real estate broker or salesperson. At least one member or officer of each partnership, association, or corporation shall be a real estate broker.

543B.3 Broker--definition.

As used in this chapter, "*real estate broker*" means a person acting for another for a fee, commission, or other compensation or promise, whether it be for all or part of a person's time, and who engages directly or indirectly in any of the following acts:

1. Sells, exchanges, purchases, rents, or leases real estate.
2. Lists, offers, attempts, or agrees to list real estate for sale, exchange, purchase, rent, or lease.
3. Advertises or holds oneself out as being engaged in the business of selling, exchanging, purchasing, renting, leasing, or managing real estate.
4. Negotiates, or offers, attempts, or agrees to negotiate, the sale, exchange, purchase, rental, or lease of real estate.
5. Buys, sells, offers to buy or sell, or otherwise deals in options on real estate or improvements on real estate.
6. Collects, or offers, attempts, or agrees to collect, rent for the use of real estate.
7. Assists or directs in the procuring of prospects, intended to result in the sale, exchange, purchase, rental, or leasing of real estate.
8. Assists or directs in the negotiation of any transaction intended to result in the sale, exchange, purchase, rental, or leasing of real estate.
9. Prepares offers to purchase or purchase agreements, listing contracts, agency disclosures, real property residential and agricultural rental agreements, real property commercial rental agreements of one year or less, and groundwater hazard statements, including any modifications, amendments, or addendums to these specific documents.

543B.4 Real estate--definition.

As used in this chapter, "*real estate*" means real property wherever situated, and includes any and all leaseholds or any other interest or estate in land, and business opportunities which involve any interest in real property.

543B.5 Other definitions.

As used in this chapter, unless the context otherwise requires:

1. "*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.

2. "*Agency agreement*" means a written agreement between a broker and a client which identifies the party the broker represents in a transaction.

3. "*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.

4. "*Branch office*" means a real estate broker's office other than a principal place of business.

5. "*Broker associate*" means a person who has a broker's license but is licensed under, and employed by or otherwise associated with, another broker as a salesperson.

6. "*Brokerage*" means the business or occupation of a real estate broker.

7. "*Brokerage agreement*" means a contract between a broker and a client which establishes the relationship between the parties as to the brokerage services to be performed and contains the provisions required in section 543B.56A.

8. "*Brokerage services*" means those activities identified in sections 543B.3 and 543B.6.

9. "*Client*" means a party to a transaction who has an agency agreement with a broker for brokerage services.

10. "*Customer*" means a consumer who is not being represented by a licensee but for whom the licensee may perform ministerial acts.

11. "*Designated broker*" means a licensee designated by a real estate brokerage agency to act for the agency in conducting real estate brokerage services.

12. "*Inactive license*" means either a broker or salesperson license certificate that is on file with the real estate commission in the commission office and during which time the licensee is precluded from engaging in any of the acts of this chapter.

13. "*Licensee*" means a broker or a salesperson licensed pursuant to this chapter.

13A. "*Listing*" is an agreement between a property owner and another person in which that person holds or advertises the property to the public as being available for sale or lease.

14. "*Material adverse fact*" means an adverse fact that a party indicates is of such significance, or that is generally recognized by a competent licensee as being of such significance to a reasonable party, that it affects or would affect the party's decision to enter into a contract or agreement concerning a transaction, or affects or would affect the party's decision about the terms of the contract or agreement.

For purposes of this subsection, "*adverse fact*" means a condition or occurrence that is generally

recognized by a competent licensee as resulting in any of the following:

- a. Significantly and adversely affecting the value of the property.
- b. Significantly reducing the structural integrity of improvement to real estate.
- c. Presenting a significant health risk to occupants of the property.

15. "*Negotiate*" means to act as an intermediary between the parties to a transaction, and includes any of the following acts:

- a. Participating in the parties' discussion of the terms of a contract or agreement concerning a transaction.

b. Completing, when requested by a party, appropriate forms or other written record to document the party's proposal in a manner consistent with the party's intent.

c. Presenting to a party the proposals of other parties to the transaction and informing the party receiving a proposal of the advantages and disadvantages of the proposal.

16. "*Party*" means a person seeking to sell, exchange, buy, or rent an interest in real estate, a business, or a business opportunity. "*Party*" includes a person who seeks to grant or accept an option to buy, sell, or rent an interest in real estate.

17. "*Person*" means an individual, partnership, association, or corporation.

18. "*Regular employee*" means a person whose compensation is fixed in advance, who does not receive a commission, who works exclusively for the owner, and whose total compensation is subject to state and federal withholding.

19. "*Salesperson*" means a person who is licensed under, and employed by or otherwise associated with, a real estate broker, as a selling, renting, or listing agent or representative of the broker.

20. "*Transaction*" means the sale, exchange, purchase, or rental of, or the granting or acceptance of an option to sell, exchange, purchase, or rent an interest in real estate.

543B.6 Acts constituting dealing in real estate.

A person who, for another, in consideration of compensation, by fee, commission, salary, or otherwise, or with the intention or in the expectation or upon the promise of receiving or collecting a fee, does, offers or attempts or agrees to do, engages in or offers or attempts or agrees to engage in, either directly or indirectly, any single act or transaction contained in the definition of a real estate broker as set out in section 543B.3, whether the act be an incidental part of a transaction or the entire transaction is a real estate broker or real estate salesperson within the meaning of this chapter.

543B.7 Acts excluded from provisions.

The provisions of this chapter shall not apply to the sale, exchange, purchase, rental, lease, or advertising of any real estate in any of the following cases:

1. A person who, as owner, spouse of an owner, general partner of a limited partnership, lessor, or prospective purchaser who does not make repeated and successive transactions of a like character, or through another engaged by such person on a regular full-time basis, buys, sells, manages, or otherwise performs any act with reference to property owned, rented, leased, or to be acquired by such person.

2. By any person acting as attorney in fact under a duly executed and acknowledged power of attorney from the owner, to act on behalf of the owner or lessor to authorize the final consummation and execution of any contract for the sale, leasing, or exchange of real estate. The exclusion in this subsection does not apply to a person who, in the regular course of a business operated in the nature of a property management or brokerage business, makes repeated and successive transactions of a like character for compensation.

3. A licensed attorney admitted to practice in Iowa acting solely as an incident to the practice of law.

4. A person acting as a receiver, trustee in bankruptcy, administrator, executor, guardian, or while acting under court order or under authority of a deed of trust, trust agreement, or will.

5. The acts of an auctioneer in conducting a public sale or auction. The auctioneer's role must be limited to establishing the time, place, and method of an auction; advertising the auction including a brief description of the property for auction and the time and place for the auction; and crying the property at the auction. The auctioneer shall provide in any advertising the name and address of the real estate broker who is providing brokerage services for the transaction and the name of the real estate broker or attorney who is responsible for closing the sale of the

property. The real estate broker providing brokerage services shall be present at the time of the auction and, if found to be in violation of this subsection, shall be subject to a civil penalty of two thousand five hundred dollars. If the auctioneer closes or attempts to close the sale of the property or otherwise engages in acts defined in sections 543B.3 and 543B.6 then the requirements of this chapter do apply to the auctioneer. If an investigation pursuant to this chapter reveals that an auctioneer has violated this subsection or has assumed to act in the capacity of a real estate broker or real estate salesperson, the real estate commission may issue a cease and desist order, and shall issue a warning letter notifying the auctioneer of the violation for the first offense, and impose a penalty of up to the greater of ten thousand dollars or ten percent of the real estate sales price for each subsequent violation.

6. An isolated real estate rental transaction by an owner's representative on behalf of the owner; such transaction not being made in the course of repeated and successive transactions of a like character.

7. The sale of time-share uses as defined in section 557A.2.

8. A person acting as a resident manager when such resident manager resides in the dwelling and is engaged in the leasing of real property in connection with their employment.

9. An officer or employee of the federal government, state government, or a political subdivision of the state, in the conduct of the officer's or employee's official duties.

10. A person employed by a public or private utility who performs an act with reference to property owned, leased, or to be acquired by the utility employing that person, where such an act is performed in the regular course of, or incident to, the management of the property and the investment in the property.

11. A nonlicensed employee of a licensee who provides information to another licensee concerning the sale, exchange, purchase, rental, lease, or advertising of real estate which has been provided to the employee by the employer licensee either verbally or in writing.

543B.8 Real estate commission created -- staff.

A real estate commission is created within the professional licensing and regulation division of the department of commerce. The commission consists of five members licensed under this chapter and two members not licensed under this chapter and who shall represent the general public. At least one of the licensed members shall be a licensed real estate salesperson, except that if the licensed real estate salesperson becomes a licensed real estate broker during a term of office, that person may complete the term, but is not eligible for reappointment on the commission as a licensed real estate salesperson. A licensed member shall be actively engaged in the real estate business and shall have been so engaged for five years preceding the appointment, the last two of which shall have been in Iowa. Professional associations or societies of real estate brokers or real estate salespersons may recommend the names of potential commission members to the governor. However, the governor is not bound by their recommendations. A commission member shall not be required to be a member of any professional association or society composed of real estate brokers or salespersons. Commission members shall be appointed by the governor subject to confirmation by the senate. Appointments shall be for three-year terms and shall commence and end as provided in section 69.19. A member shall serve no more than three terms or nine years, whichever is less. No more than one member shall be appointed from a county. A commission member shall not hold any other elective or appointive state or federal office. Vacancies shall be filled for the unexpired term by appointment of the governor and are subject to senate confirmation. A majority of the commission members constitutes a quorum. The administrator of the professional licensing and regulation division shall hire and provide staff to assist the commission with implementing this chapter. The administrator of the professional licensing and

regulation division of the department of commerce shall hire a real estate education director to assist the commission in administering education programs for the commission.

543B.9 Rules.

The real estate commission may adopt rules to carry out and administer the provisions of this chapter. The commission may carry on a program of education of real estate practices and matters relating to real estate. The commission shall adopt rules necessary to carry out the provisions of chapter 558A relating to the disclosure of information before the transfer of real estate.

543B.10 and 543B.11 Reserved.

543B.12 Expenses of members -- compensation.

Members of the real estate commission are entitled to be reimbursed for their actual expenses in the performance of duties pertaining to their office within the limits of the funds appropriated to the commission. Each member of the commission may also be eligible to receive compensation as provided in section 7E.6.

543B.13 Seal -- records.

The real estate commission shall adopt a seal with such design as the commission may prescribe engraved thereon, by which it shall authenticate its proceedings. Copies of all records and papers in the office of the commission, duly certified and authenticated by the seal of said commission, shall be received in evidence in all courts equally and with like effect as the original. All records kept in the office of the commission under authority of this chapter shall be open to public inspection under such reasonable rulegraveejETEMC TJ0031 Tw 12 0 0.

States, or in any foreign jurisdiction, may be denied a license by the commission, on the grounds of the conviction. For purposes of this section, "conviction" means a conviction for an indictable offense and includes a guilty plea, deferred judgment from the time of entry of the deferred judgment until the time the defendant is discharged by the court without entry of judgment, or other finding of guilt by a court of competent jurisdiction.

4. An applicant for a real estate broker's or salesperson's license who has had a professional license of any kind revoked or suspended or who has had any other form of 1 30 discipline imposed, in this or any other jurisdiction may be denied a license by the commission on the grounds of the revocation, suspension, or other discipline.

5. A person who makes a false statement of material fact on an application for a real estate broker's or salesperson's license, or who causes to be submitted, or has been a party to preparing or submitting any false application for such license, may be denied a license by the commission on the grounds of the false statement or submission. A licensee found to have made such a statement or who caused to be submitted, or was a party to preparing or submitting any false application for a real estate broker's or salesperson's license, may have the license suspended or revoked by the commission on the grounds of the false statement or submission.

6. A licensed real estate broker or salesperson shall notify the commission of the licensee's conviction of an offense included in subsection 3 within sixty days of the conviction. The failure of the licensee to notify the commission of the conviction within sixty days of the date of the conviction is sufficient grounds for revocation of the license.

7. The commission, when considering the denial or revocation of a license pursuant to this section, shall consider the nature of the offense; any aggravating or extenuating circumstances which are documented; the time lapsed since the revocation, conduct, or conviction; the rehabilitation, treatment, or restitution performed by the applicant or licensee; and any other factors the commission deems relevant. Character references may be required but shall not be obtained from licensed real estate brokers or salespersons.

8. To qualify for a license as a real estate broker, a person shall complete at least sixty contact hours of commission approved real estate education within twenty-four months prior to taking the broker examination. This education shall be in addition to the required salesperson prelicense course. The applicant shall have been a licensed real estate salesperson actively engaged in real estate for a period of at least twenty-four months preceding the date of application, or shall have had experience substantially equal to that which a licensed real estate salesperson would ordinarily receive during a period of twenty-four months, whether as a former broker or salesperson, a manager of real estate, or otherwise.

9. A qualified applicant for a license as a real estate salesperson shall complete a commission approved short course in real estate education of at least thirty hours during the twelve months prior to taking the salesperson examination.

10. An applicant for an initial real estate broker's or salesperson's license shall be subject to a national criminal history check through the federal bureau of investigation. The commission shall request the criminal history check and shall provide the applicant's fingerprints to the department of public safety for submission through the state criminal history repository to the federal bureau of investigation. The applicant shall authorize release of the results of the criminal history check to the real estate commission. The applicant shall pay the actual cost of the fingerprinting and criminal history check, if any. Unless the criminal history check was completed within the ninety calendar days prior to the date the license application is received by the real estate commission, the commission shall reject and return the application to the applicant. The results of a criminal history check conducted pursuant to this subsection shall not be considered a public record under chapter 22.

543B.16 Application forms.

Every applicant for a real estate broker's license shall apply in writing upon blanks prepared or furnished by the real estate commission. The real estate commission shall not require that a recent photograph of the applicant be attached to the application. Every applicant for a license shall furnish information setting forth the applicant's present address, both of business and residence, a complete list of all former places where the applicant may have been engaged in business for a period of sixty days or more, during the last five years, accounting for such entire period. The commission shall prepare and furnish written application blanks for the salesperson's license requesting information as the commission may require. The commission shall not require that a recent photograph of the applicant be attached to the application. The application for the salesperson's license shall be accompanied by a written statement by the broker whose service the applicant is about to enter recommending that the license be granted to the applicant.

543B.17 Reserved.

543B.18 Enforcement of rules.

The real estate commission is expressly vested with the power and authority to make and enforce any and all such reasonable rules connected with the application for any license as shall be deemed necessary to administer and enforce the provisions of this chapter.

543B.19 License denied -- hearing.

If the real estate commission, after an application in proper form has been filed with it, accompanied by the proper fee, shall deny a license to the applicant, upon the applicant's application in writing, and within a period of thirty days of such denial, the applicant shall be entitled to a hearing as provided in section 543B.35.

543B.20 Written Examination.

Examinations for registration shall be given as often as deemed necessary by the real estate commission, but no less than one time per year. Each applicant for a license must pass a written examination authorized by the commission and administered by the commission or persons designated by the commission. The examination shall be of scope and wording sufficient in the judgment of the commission to establish the competency of the applicant to act as a real estate broker or salesperson in a manner to protect the interests of the public. An examination for a real estate broker shall be of a more exacting nature than that for a real estate salesperson and require higher standards of knowledge of real estate. All examinations in real estate theory shall be in writing and the identity of the persons taking the examinations shall be concealed until after the examination papers have been graded. For examinations in practice, the identity of the persons taking the examinations shall also be concealed as far as possible. A person who fails to pass either written examination once may immediately apply to take the next available examination. Thereafter, the applicant may take the examination at the discretion of the commission. An applicant who has failed either examination may request in writing information from the commission concerning the applicant's examination grade and subject areas or questions which the applicant failed to answer correctly, except that if the commission administers a uniform, standardized examination, the commission is only required to provide the examination grade and other information concerning the applicant's examination results which is available to the commission.

543B.21 Nonresident License.

A nonresident of this state may be licensed as a real estate broker or a real estate salesperson, upon complying with all requirements of law and with all the provisions and conditions of this

chapter relative to resident brokers or salespersons and the filing by the applicant with the real estate commission of a certification from the state of original licensure signed by the duly qualified and authorized official or officials of that state that the applicant is there currently licensed, that no charges against the applicant are there pending, and that applicant's record in that state justifies the issuance of a license to the applicant in Iowa. The commission may waive the requirement of an examination in the case of a nonresident broker who is licensed under the laws of a state having similar requirements and where similar recognition and courtesies are extended to licensed real estate brokers and salespersons of this state.

543B.22 Nonresident's place of business.

A nonresident to whom a license is issued upon compliance with all the other requirements of law and provisions of this chapter, is not required to maintain a definite place of business within this state. Provided that the nonresident, if a broker, shall maintain an active place of business within the state of the nonresident's domicile, and that the privilege of submitting a certification of licensure certified to by the qualified and authorized official or officials of the state of original licensure, in lieu of the recommendations and statements otherwise required, only applies to licensed real estate brokers and real estate salespersons of those states under the laws of which similar recognition and courtesies are extended to licensed real estate brokers and real estate salespersons of this state.

543B.23 Actions against nonresidents.

Every nonresident applicant, before the issuance of a license, shall file an irrevocable consent that suits and actions may be commenced against such applicant in the proper court of any county of this state in which a cause of action may arise, by the service of any process or pleadings authorized by the laws of this state on the chairperson of the real estate commission, said consent stipulating and agreeing that such service of such process or pleadings on the commission shall be taken and held in all courts to be as valid and binding as if due service had been made upon said applicant within the state of Iowa. Said instrument containing such consent shall be authenticated by the seal thereof, if a corporation, or by the acknowledged signature of a member or officer thereof, if otherwise. All such applications, except from individuals, shall be accompanied by a duly certified copy of the resolutions of the proper officers, or managing board, authorizing the proper officer to execute the same. In case any process or pleadings mentioned in the case are served upon the commission it shall be by duplicate copies, one of which shall be filed in the office of the commission, and the other immediately forwarded by certified mail to the main office of the applicant against whom or which said process or pleadings are directed.

543B.24 Custody of salesperson's license.

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.

543B.25 Display of license. 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 employees.

543B.26 Reserved.

543B.27 Fees.

1. The real estate commission shall set fees for examination and licensing of real estate brokers

and real estate salespersons. The commission shall determine the annual cost of administering the examination and shall set the examination fee accordingly. The commission shall set the fees for the real estate broker's licenses and for real estate salesperson's licenses based upon the administrative costs of sustaining the commission. The fees shall include, but shall not be limited to, the costs for:

- a. Per diem, expenses, and travel for commission members.
 - b. Office facilities, supplies, and equipment.
 - c. Staff assistance.
 - d. Establishing and maintaining a real estate education program.
2. Notwithstanding subsection 1, a nonresident person seeking to procure a license pursuant to this chapter shall be charged a fee equal to the greater of the following:
- a. The fee as determined pursuant to subsection 1.
 - b. A fee equal to the fee the nonresident person would be charged by such person's state of residence if that person were a resident of this state making application for a license in that state and that state charges a nonresident a fee which is greater than that charged by that state to a resident of that state.

543B.28 Expiration of license.

Every license shall expire in multiyear intervals as determined by the real estate commission. A person who fails to renew a real estate broker's or real estate salesperson's license by the expiration date shall be allowed to do so within thirty days following its expiration, but the commission may assess a reasonable penalty. The commission upon the written request of the applicant on forms prescribed by the commission, and payment of the fee, shall issue a new license for each ensuing license period except as provided in section 543B.15, in the absence of any reason or condition which might warrant the revocation of a license after a hearing as provided in sections 543B.34 and 543B.35.

543B.29 Revocation or suspension.

A license to practice the profession of real estate broker and salesperson may be revoked or suspended when the licensee is guilty of the following acts or offenses:

1. Fraud in procuring a license.
2. Professional incompetency.
3. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.
4. Habitual intoxication or addiction to the use of drugs.
5. Conviction of an offense included in section 543B.15, subsection 3. For purposes of this section, "conviction" means a conviction for an indictable offense and includes a guilty plea, deferred judgment from the time of entry of the deferred judgment until the time the defendant is discharged by the court without entry of judgment, or other finding of guilt by a court of competent jurisdiction. A copy of the record of conviction, guilty plea, deferred judgment, or other finding of guilt is conclusive evidence.
6. Fraud in representations as to skill or ability.
7. Use of untruthful or improbable statements in advertisements.
8. Willful or repeated violations of the provisions of this Act.*
9. Noncompliance with insurance requirements under section 543B.47.
10. Noncompliance with the trust account requirements under section 543B.46.
11. Revocation of any professional license held by the licensee in this or any other jurisdiction.

The revocation of a broker's license shall automatically suspend every license granted to any person by virtue of the person's employment by the broker whose license has been revoked,

pending a change of employer and the issuance of a new license. The new license shall be issued upon payment of a fee in an amount determined by the commission based upon the administrative costs involved, if granted during the same license period in which the original license was granted. A real estate broker or salesperson who is an owner or lessor of property or an employee of an owner or lessor may have the broker's or salesperson's license revoked or suspended for violations of this section or section 543B.34, except subsections 4, 5, 6 and 9, with respect to that property.

543B.30 Actions -- license as prerequisite.

A person engaged in the business or acting in the capacity of a real estate broker or a real estate salesperson within this state shall not bring or maintain any action in the courts of this state for the collection of compensation for services performed as a real estate broker or salesperson without alleging and proving that the person was a duly licensed real estate broker or real estate salesperson at the time the alleged cause of action arose.

543B.31 Place of business.

Every real estate broker, except as provided in section 543B.22, shall maintain a place of business in this state. If the real estate broker maintains more than one place of business within the state, a duplicate license shall be issued to such broker for each branch office maintained. Provided, that if such broker be a partnership, association, or corporation, a duplicate shall be issued to the members or officers thereof, and a fee determined by the real estate commission in each case shall be paid for each duplicate license.

543B.32 Change of location.

Notice in writing shall be given to the 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.

543B.33 Salespersons -- change of employment.

When any real estate salesperson is discharged or terminates employment with the real estate broker by whom the salesperson is employed, the real estate broker shall immediately deliver or mail by certified mail to the real estate commission the real estate salesperson's license on the reverse side of which the employing broker shall set out the date and cause of termination of employment. The real estate broker at the time of mailing the real estate salesperson's license to the commission shall address a communication to the last known residence address of the real estate salesperson stating that the license has been delivered or mailed to the commission. A copy of the communication to the real estate salesperson shall accompany the license when mailed or delivered to the commission. It is unlawful for any real estate salesperson to perform any of the acts contemplated by this chapter either directly or indirectly under authority of a license from and after the date of receipt of the license by the commission. The commission shall, upon presentation of evidence by the salesperson that the salesperson has been employed by another broker, issue another license for the balance of the current license period showing each change of employment. A fee as determined by the commission shall be charged for the issuance of the license. Not more than one license shall be issued to any real estate salesperson for the same period of time.

543B.34 Investigations by commission.

The real estate commission may upon its own motion and shall upon the verified complaint in

writing of any person, if the complaint together with evidence, documentary or otherwise, presented in connection with the complaint makes out a prima facie case, request commission staff or any other duly authorized representative or designee to investigate the actions of any real estate broker, real estate salesperson, or other person who assumes to act in either capacity within this state, and may suspend or revoke a license issued under this chapter at any time if the licensee has by false or fraudulent representation obtained a license, or if the licensee or other person assuming to act in the capacity of a real estate broker or real estate salesperson, except for those actions exempt pursuant to section 543B.7, is found to be guilty of any of the following:

1. Making any substantial misrepresentation.
2. Making any false promise of a character likely to influence, persuade or induce.
3. Pursuing a continued and flagrant course of misrepresentation, or making of false promises through agents or salespersons or advertising or otherwise.
4. Acting for more than one party in a transaction without the knowledge of all parties for whom the licensee acts.
5. Accepting a commission or valuable consideration as a real estate broker associate or salesperson for the performance of any of the acts specified in this chapter, from any person, except the broker associate's or salesperson's employer, who must be a licensed real estate broker. However, a broker associate or salesperson may, without violating this subsection, accept a commission or valuable consideration from a corporation which is wholly owned, or owned with a spouse, by the broker associate or salesperson if the conditions described in subsection 9 are met.
6. Representing or attempting to represent a real estate broker other than the licensee's employer, without the express knowledge and consent of the employer.
7. Failing, within a reasonable time, to account for or to remit any moneys coming into the licensee's possession which belong to others.
8. Being unworthy or incompetent to act as a real estate broker or salesperson in such manner as to safeguard the interests of the public.
- 9a Paying a commission or other valuable consideration or any part of such commission or consideration for performing any of the acts specified in this chapter to a person who is not a licensed broker or salesperson under this chapter or who is not engaged in the real estate business in another state or foreign country, provided that the provisions of this section shall not be construed to prohibit the payment of earned commissions or consideration to any of the following:
 - (1) The estate or heirs of a deceased real estate licensee when such licensee had a valid real estate license in effect at the time the commission or consideration was earned.
 - (2) A citizen of another country acting as a referral agent if that country does not license real estate brokers and if the Iowa licensee paying the commission or consideration obtains and maintains reasonable written evidence that the payee is a citizen of the other country, is not a resident of this country, and is in the business of brokering real estate in that other country.
 - (3) A corporation pursuant to paragraph "b".
- b. A broker may pay a commission to a corporation which is wholly owned, or owned with a spouse, by a salesperson or broker associate employed by or otherwise associated with the broker, if all of the following conditions are met:
 - (1) The corporation does not engage in real estate transactions as a third-party agent or in any other activity requiring a license under this chapter.
 - (2) The employing broker is not relieved of any obligation to supervise the employed licensee or any other requirement of this chapter or the rules adopted pursuant to this chapter.
 - (3) The employed broker associate or salesperson is not relieved from any personal civil liability for any licensed activities by interposing the corporate form.
10. Failing, within a reasonable time, to provide information requested by the commission as

the result of a formal or informal complaint to the commission which would indicate a violation of this chapter.

11. Any other conduct, whether of the same or different character from that specified in this section, which demonstrates bad faith, or improper, fraudulent, or dishonest dealings which would have disqualified the licensee from securing a license under this chapter.

Any unlawful act or violation of any of the provisions of this chapter by any real estate broker associate or salesperson, employee, or partner or associate of a licensed real estate broker, is not cause for the revocation of the license of any real estate broker, unless the commission finds that the real estate broker had guilty knowledge of the unlawful act or violation.

If an investigation pursuant to this section reveals that an unlicensed person has assumed to act in the capacity of a real estate broker or real estate salesperson, the commission may issue a cease and desist order, and may impose a civil penalty of up to the greater of ten thousand dollars or ten percent of the real estate sale price.

543B.35 Hearing on charges.

The real estate commission shall, upon request of the applicant as provided in section 543B.19, or before revoking any license, set the matter down for a hearing and at least twenty days prior to the date set for the hearing it shall notify the applicant or licensee in writing, which said notice shall contain an exact statement of the charges made and the date and place of the hearing. The applicant or licensee at all such hearings shall have the opportunity to be heard in person and by counsel in reference thereto. Such written notice of hearing may be served by delivery personally to the applicant or licensee or by mailing the same by certified mail to the last known business address of such applicant or licensee. If such applicant or licensee be a salesperson, the commission shall also notify the broker employing the salesperson or into whose employ the salesperson is about to enter by mailing such notice by certified mail to the broker's last known business address. The hearing on such charges shall be at such time and place as the commission shall prescribe.

543B.36 Attendance of witnesses.

In the preparation and conducting of such hearings, the real estate commission shall have power to execute and sign subpoenas to require the attendance and testimony of any witnesses and the producing of any papers or books. The commission may administer oaths, examine witnesses, and take any evidence the commission deems pertinent to the determination of the charges. Any such hearing may be held before two or more members of the commission as may be directed by the commission.

543B.37 Fees and mileage.

Any witnesses so subpoenaed shall be entitled to the same fees and mileage as is prescribed by law in judicial proceedings in the courts of this state in civil cases.

543B.38 Request for witnesses.

Any party to any hearing before the real estate commission shall have the right to the attendance of witnesses in the party's behalf at such a hearing upon making a request thereof to the commission and designating the person or persons sought to be subpoenaed.

543B.39 Disobedience to subpoena.

In case of a disobedience to a subpoena the real estate commission may invoke the aid of any court of competent jurisdiction or judge thereof in requiring the attendance and testimony of witnesses and the production of papers; and such court may issue an order requiring the persons to appear before the commission and give evidence or to produce papers as the case may be; and any failure to obey such order may be punished as a contempt.

543B.40 Depositions.

The testimony may be taken by deposition as in civil cases, and any person may be compelled to appear and depose in the same manner as witnesses may be compelled to appear and testify as hereinbefore provided.

543B.41 Findings of fact.

If the majority of the real estate commission shall determine that any applicant is not qualified to receive a license, a license shall not be granted to such applicant, and if the commission shall determine that any licensee is guilty of a violation of any of the provisions of this chapter, the license may be suspended or revoked. The commission, upon request of the applicant or licensee, shall furnish said applicant or licensee with a definite statement of its findings of fact and its reason or reasons for refusing to grant the license or for suspension of the rights of the licensee or for the revocation of the license, as the case may be. Judicial review of action of the commission may be sought in accordance with the terms of the Iowa administrative procedure Act.

543B.42 List of licensees.

The real estate commission shall at least annually prepare a list of the names and addresses of all licensees licensed by it under this chapter, and of all persons whose licenses have been suspended or revoked within one year; together with other information relative to the enforcement of this chapter as it deems of interest to the public. The lists shall be mailed by the commission to any person in this state upon request.

543B.43 Penalties.

Any person found guilty of violating a provision of sections 543B.1 to 543B.42 in a first offense shall be guilty of a simple misdemeanor.

543B.44 Complaints referred to court.

The real estate commission may refer a complaint for violation of section 543B.1 before any court of competent jurisdiction, and it may take the necessary legal steps through the proper legal officers of this state to enforce the provisions hereof and collect the penalties herein provided.

543B.45 Dual contracts for sale of real property.

A person licensed under this chapter shall not knowingly make, issue, deliver, receive, or permit the use of two or more written or oral contracts for the purpose of sale concerning the same parcel of real estate one of which is not made known to the prospective lender or loan guarantor to enable the purchaser to obtain a larger loan than the true sales price would allow or to enable the purchaser to qualify for a loan which the purchaser otherwise could not obtain. Any person who shall violate the provisions of this section shall be guilty of a fraudulent practice.

543B.46 Trust accounts.

1. Each real estate broker shall maintain a common trust account in a bank, a savings and loan

association, savings bank, or credit union for the deposit of all down payments, earnest money deposits, or other trust funds received by the broker or the broker's salespersons on behalf of the broker's principal, except that a broker acting as a salesperson shall deposit these funds in the common trust account of the broker for whom the broker acts as salesperson. The account shall be an interest-bearing account. The interest on the account shall be transferred quarterly to the treasurer of state and transferred to the department of economic development for deposit in the local housing assistance program fund established in section 15.354 unless there is a written agreement between the buyer and seller to the contrary. The broker shall not benefit from interest received on funds of others in the broker's possession.

2. Each broker shall notify the real estate commission of the name of each bank or savings and loan association in which a trust account is maintained and also the name of the account on forms provided therefor.

3. Each broker shall authorize the real estate commission to examine each trust account and shall obtain the certification of the bank or savings and loan association attesting to each trust account and consenting to the examination and audit of each account by a duly authorized representative of the commission. The certification and consent shall be furnished on forms prescribed by the commission. This does not apply to an individual farm account maintained in the name of the owner or owners for the purpose of conducting ongoing farm business whether it is conducted by the farm owner or by an agent or farm manager when the account is part of a farm management agreement between the owner and agent or manager. This section also does not apply to an individual property management account maintained in the name of the owner or owners for the purpose of conducting ongoing property management whether it is conducted by the property owner or by an agent or manager when the account is part of a property management agreement between the owner and agent or manager.

4. Each broker shall only deposit trust funds received on real estate or business opportunity transactions as defined in section 543B.6 in the common trust account and shall not commingle the broker's personal funds or other funds in the trust account with the exception that a broker may deposit and keep a sum not to exceed five hundred dollars in the account from the broker's personal funds, which sum shall be specifically identified and deposited to cover bank service charges relating to the trust account.

5. A broker may maintain more than one trust account provided the commission is advised of said account as specified in subsections 2 and 3 above.

6. The commission shall verify on a test basis, a random sampling of the brokers, corporations, and partnerships for their trust account compliance. The commission may upon reasonable cause, or as a part of or after an investigation, request or order a special report.

7. The examination of a trust account shall be conducted by the commission or the commission's authorized representative.

8. The commission shall adopt rules to ensure implementation of this section.

543B.47 Insurance requirement.

1. The real estate commission shall adopt rules requiring as a condition of licensure that all real estate licensees, except those who hold inactive licenses, carry errors and omissions insurance covering all activities contemplated under this chapter. The rules shall provide for administration of the insurance requirements of this section within the multiyear licensing structure required by section 543B.28. However, the rules shall require licensees to submit evidence of compliance with this section within twenty calendar days of the commission's request, which may be made on a test basis, a random basis, or upon reasonable cause to question a licensee's compliance.

2. The commission shall contract with an insurance provider for a group policy under which coverage is available all licensees, and shall maintain coverage with the contracted provider

unless the commission determines that continuing the contract is not reasonably practical. The contract shall be solicited by competitive, sealed bid.

3. The group policy shall be made available to all licensees and shall not include any right on the part of the insurance provider to cancel coverage for a licensee.

4. A licensee shall have the option of obtaining insurance independently, if the coverage contained in an independently obtained policy complies with the minimum requirements adopted by rule of the commission.

5. The commission shall determine the terms and conditions of coverage required by subsection 1, including but not limited to the minimum limits of coverage, the permissible deductible, and the permissible exceptions.

6. Failure of a license applicant or licensee to carry the errors and omissions insurance required by this section, or to timely submit proof of coverage upon commission request, shall be grounds for the denial of an application for licensure, the denial of an application to renew a license, or the suspension or revocation of a license.

543B.48 Civil penalty amount. Notwithstanding section 272C.3, licensee discipline may include a civil penalty not to exceed two thousand five hundred dollars per violation.

543B.49 Injunctive Relief.

1. In addition to the penalty and complaint provisions of sections 543B.43, 543B.44, and 543B.48, an injunction may be granted through an action in district court to prohibit a person from engaging in an activity which violates the provisions of section 543B.1. The court shall grant a permanent or temporary injunction if it appears to the court that a violation has occurred or is imminently threatened. The plaintiff is not required to show that the violation or threatened violation would greatly or irreparably injure the plaintiff. No bond shall be required of the plaintiff unless the court determines that a bond is necessary in the public interest. The action for injunctive relief may be brought by an affected person. For the purposes of this section, "affected person" means any person directly impacted by the actions of a person suspected of violating the provisions of section 543B.1, including but not limited to the commission created in section 543B.8, a person who has utilized the services of a person suspected of violating the provisions of section 543B.1, or a private association composed primarily of members practicing a profession for which licensure is required pursuant to this chapter. If successful in obtaining injunctive relief, the affected person shall be entitled to actual costs and attorney fees. For the purposes of this section, "actual costs" means those costs other than attorney fees which were actually incurred in connection with the action, including but not limited to court and witness fees, investigative expenses, travel expenses, legal research expenses, and other related fees and expenses.

543B.50 Meetings. The real estate commission shall hold at least one meeting per year at the location of the commission's principal office and shall elect a chairperson annually. A majority of the members of the commission shall constitute a quorum.

543B.51 Public members. The public members of the real estate commission shall be allowed to participate in administrative, clerical, or ministerial functions incident to giving the examination, but shall not determine the content of the examination or determine the correctness of the answers.

543B.52 Disclosure of confidential information.

A member of the commission shall not disclose information relating to the following:

1. Criminal history or prior misconduct of the applicant.
2. Information relating to the contents of the examination.
3. Information relating to the examination results other than final score except for information about the results of an examination which is given to the person who took the examination. A member of the commission who willfully communicates or seeks to communicate such information, and any person who willfully requests, obtains, or seeks to obtain such information, is guilty of a simple misdemeanor.

543B.53 Application of chapter.

The provisions of this chapter which require successful completion of a real estate education course before being licensed as a real estate salesperson shall not apply to persons who hold real estate salesperson's licenses on July 1, 1976 or to the issuance of new licenses to these persons under the provisions of section 543B.28.

543B.54 Real estate education fund.

The Iowa real estate education fund is created as a financial assurance mechanism to assist in the establishment and maintenance of a real estate education program at the university of northern Iowa and to assist the real estate commission in providing an education director. The fund is created as a separate fund in the state treasury, and any funds remaining in the fund at the end of each fiscal year shall not revert to the general fund, but shall remain in the Iowa real estate education fund. Twenty-five dollars per license from fees deposited for each real estate salesperson's license and each broker's license shall be distributed and are appropriated to the board of regents for the purpose of establishing and maintaining a real estate education program at the university of northern Iowa. The remaining moneys in the fund shall be distributed and are appropriated to the professional licensing and regulation division of the department of commerce for the purpose of hiring and compensating a real estate education director and regulatory compliance personnel.

543B.55 Disclosure of relationship.

The real estate commission shall adopt rules requiring that each real estate broker or salesperson in a real estate transaction disclose in writing the broker's or salesperson's agency relationship with the buyer or seller in the transaction.

543B.56 Duties of licensees.

1. *Duties to all parties in a transaction.* In providing brokerage services to all parties to a transaction, a licensee shall do all of the following:
 - a. Provide brokerage services to all parties to the transaction honestly and in good faith.
 - b. Diligently exercise reasonable skill and care in providing brokerage services to all parties.
 - c. Disclose to each party all material adverse facts that the licensee knows except for the following:
 - (1) Material adverse facts known by the party.
 - (2) 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.
 - (3) Material adverse facts the disclosure of which is prohibited by law.
 - (4) Material adverse facts that are known to a person who conducts an inspection on behalf of the party.
 - d. Account for all property coming into the possession of a licensee that belongs to any party within a reasonable time of receiving the property.

2. *Duties to a client.* In addition to the licensee's duties under subsection 1, a licensee providing brokerage services to a client shall do all of the following:

- a. Place the client's interests ahead of the interests of any other party, unless loyalty to a client violates the licensee's duties under subsection 1, section 543B.58, or under other applicable law.
- b. Disclose to the client all information known by the licensee that is material to the transaction and that is not known by the client or could not be discovered by the client through a reasonably diligent inspection.
- c. Fulfill any obligation that is within the scope of the agency agreement, except those obligations that are inconsistent with other duties that the licensee has under this chapter or any other law.
- d. Disclose to a client any financial interests the licensee or the brokerage has in any business entity to which the licensee or brokerage refers a client for any service or product related to the transaction.

3. *Prohibited conduct.* In providing brokerage services, a licensee shall not do either of the following:

- a. Accept a fee or compensation related to a transaction from a person other than the licensee's client, unless the licensee has provided written notice to all parties to the transaction that a fee or compensation will be accepted by the licensee from such person.
- b. Act in a transaction on the licensee's own behalf, on behalf of the licensee's immediate family or brokerage, or on behalf of an organization or business entity in which the licensee has an interest, unless the licensee has provided written disclosure of the interest to all parties to the transaction.

543B.56A Brokerage Agreements Contents.

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 counteroffers 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.

543B.57 Confirmation and disclosure of relationship.

1. A licensee shall not represent any party or parties to a transaction or otherwise as a licensee unless that licensee makes a disclosure to all parties to the transaction identifying which party that person represents in the transaction.

2. a. The disclosure required in subsection 1 shall be made by the licensee at the time the licensee provides specific assistance to the client. A change in a licensee's representation that makes the initial disclosure incomplete, misleading, or inaccurate requires that a new disclosure be made immediately.

b. For purposes of this section, "specific assistance" means eliciting or accepting confidential information about a party's real estate needs, motivation, or financial qualifications. "Specific assistance" does not mean an open house showing, preliminary conversations concerning price range, location, and property styles, or responding to general factual questions concerning properties which have been advertised for sale or lease.

3. The written agency disclosure form shall contain all of the following:

a. A statement of which party is the licensee's client or, if the licensee is providing brokerage services to more than one client as provided under section 543B.60, a statement of all persons

who are the licensee's clients.

b. A statement of the licensee's duties to the licensee's client under section 543B.56, subsections 1 and 2.

c. Any additional information that the licensee determines is necessary to clarify the licensee's relationship to the licensee's client or customer.

4. This section does not prohibit a person from representing oneself.

5. The seller, in the listing agreement, may authorize the seller's licensee to disburse part of the licensee's compensation to other licensees, including a buyer's licensee solely representing the buyer. A licensee representing a buyer shall inform the listing licensee, if there is a listing licensee, either verbally or in writing, of the agency relationship before any negotiations are initiated. The obligation of either the seller or the buyer to pay compensation to a licensee is not determinative of the agency relationship.

543B.58 Licensees representing more than one client in a transaction.

1. A licensee shall not be the agent for both a buyer and a seller to a transaction without obtaining the written consent of both the buyer and the seller. The written consent shall state that the licensee has made a full disclosure of the type of representation the licensee will provide. The consent to multiple representation shall contain a statement of the licensee's duties under section 543B.56, subsection 1, a statement of the licensee's duties to the client under section 543B.56, subsection 2, paragraphs "b" and "c", and a statement that the clients understand the licensee's duties and consent to the licensee's providing brokerage services to more than one client.

2. A consent to multiple representation may contain additional disclosures by the licensee or additional agreements between the licensee and the clients that do not violate any duty of a licensee under this chapter.

543B.59 Appointed agents within a firm.

1. *Appointed agents.* A real estate brokerage agency entering into a brokerage agreement, through a designated broker, may notify a client in writing of those affiliated licensees within the real estate brokerage agency who will be acting as appointed agents of that client to the exclusion of all other affiliated licensees within the real estate brokerage agency.

2. *Dual agent.* A real estate brokerage agency and a designated broker are not considered to be dual agents solely because of an appointment under the provisions of this section. However, an affiliated licensee who personally represents both the seller and the buyer in a particular transaction is considered to be a disclosed dual agent and is required to comply with the provisions of this subchapter governing disclosed dual agents.

3. *Actual knowledge -- information.* A client, a real estate brokerage agency, and its appointed agents are deemed to possess only actual knowledge and information at the time the appointed agents are appointed. Knowledge or information is not imparted by operation of law among the clients, the real estate brokerage agency, and its appointed agents.

4. *Appointments -- roles.* The commission shall define by rule the methods of appointment and the role of the real estate brokerage agency and the designated broker. The rules must include a requirement that clients be informed as to the real estate brokerage agency's appointed agent policy and be given written notice of that policy in advance of entering into a brokerage agreement.

543B.60 Licensees providing services in more than one transaction.

A licensee may provide brokerage services simultaneously to more than one party in different transactions unless the licensee agrees with a client that the licensee is to provide brokerage services only to that client. If the licensee and a client agree that the licensee is to provide

brokerage services only to that client, the agency agreement disclosure required under section 543B.57, subsection 1, shall contain a statement of that agreement.

543B.60A Prohibited Practices.

1. A licensee shall not request a referral fee after a bona fide offer to purchase is accepted.
2. A licensee shall not request a referral fee after a bona fide listing agreement has been signed.
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.
4. For purposes of this section, "consumer" shall include parties or prospective parties to a real estate transaction, clients or prospective clients of a licensee, or customers or prospective customers of a licensee.
5. This section does not address relationships between a broker and the broker associates or salespersons licensed under, employed by, or otherwise associated with the broker in a real estate brokerage agency.
6. A violation of this section is deemed a violation of section 543B.29, subsection 3.
7. The purpose of this section is to prohibit licensee practices that interfere with contractual arrangements, place improper restrictions on consumer choice, compromise a licensee's fiduciary obligations, and create conflicts of interest.

543B.61 Violations -- real estate commission jurisdiction.

1. Failure of a licensee to comply with sections 543B.57 through 543B.60 is prima facie evidence of a violation under section 543B.34, subsection 4.
2. Failure of a licensee to act in accordance with the disclosures made pursuant to sections 543B.56 through 543B.58 is prima facie evidence of a violation under section 543B.34, subsection 4.
3. Nothing in this subchapter shall affect the validity of title to real property transferred based solely on the reason that a licensee failed to conform to the provisions of this subchapter.

543B.62 Changes in common law duties and liabilities of licensees and parties.

1. Except as provided in subsection 2, the duties of a licensee specified in this chapter or in rules adopted pursuant to this chapter supersede any fiduciary duties of a licensee to a party to a transaction based on common law principles of agency to the extent that those common law fiduciary duties are inconsistent with the duties specified in this chapter or rules adopted pursuant to this chapter.
2. This section shall not be construed to modify a licensee's duty under common law as to negligent or fraudulent misrepresentation of material information.
3. a. A licensee who is providing brokerage services to a client and who retains another licensee to provide brokerage services to that client is not liable for misrepresentation made by the other licensee, unless the retaining licensee knew or should have known of the other licensee's misrepresentation or the other licensee is repeating a misrepresentation made to the other licensee by the retaining licensee.
 - b. A broker is responsible for supervising a salesperson or broker associate employed by or otherwise associated with the broker as a representative of the broker. The existence of an independent contractor relationship or any other special compensation arrangement between the broker and the salesperson or broker associate does not relieve the broker, salesperson, or broker

associate of the duties and responsibilities established by this chapter. A salesperson or broker associate shall keep the employing broker fully informed of all activities being conducted on behalf of the broker and any other activities that might impact on the broker's responsibilities. However, the failure of the salesperson or broker associate to keep the employing broker fully informed does not relieve the broker of the duties and responsibilities established by this chapter.

543B.63 Licensee not considered subagent.

A licensee is not considered to be a subagent of a client of another licensee solely by reason of membership or other affiliation by the licensee in a multiple listing service or other similar information source, and an offer of subagency shall not be made through a multiple listing service or other similar information source.

543B.64 Chapter is not limiting.

The duties imposed upon persons under this chapter or pursuant to rules adopted by the real estate commission shall not limit or abridge any duty or responsibility to disclose created by other applicable law, or under a contract between parties.

IOWA REAL ESTATE COMMISSION

CODE OF IOWA

CHAPTER 558A REAL ESTATE DISCLOSURES

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CHAPTER 558A REAL ESTATE DISCLOSURES

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Indicates a law change effective 7/1/2006

CHAPTER 558A REAL ESTATE DISCLOSURES

558A.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. "*Broker*" means a real estate broker licensed pursuant to chapter 543B.
2. "*Commission*" means the real estate commission created pursuant to section 543B.8.
3. "*Salesperson*" means a salesperson licensed pursuant to chapter 543B.
4. "*Transfer*" means the transfer or conveyance by sale, exchange, real estate contract, or any other method by which real estate and improvements are purchased, if the property includes at least one but not more than four dwelling units. However, a transfer does not include any of the following:
 - a. A transfer made pursuant to a court order, including but not limited to a transfer under chapter 633, the execution of a judgment, the foreclosure of a real estate mortgage pursuant to chapter 654, the forfeiture of a real estate contract under chapter 656, a transfer by a trustee in bankruptcy, a transfer by eminent domain, or a transfer resulting from a decree for specific performance.
 - b. A transfer to a mortgagee by a mortgagor or successor in interest who is in default, or a transfer by a mortgagee who has acquired real property at a sale conducted pursuant to chapter 654, a transfer back to a mortgagor exercising a right of first refusal pursuant to section 654.16A, a nonjudicial voluntary foreclosure procedure under section 654.18 or chapter 655A, or a deed in lieu of foreclosure under section 654.19.
 - c. A transfer by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust.
 - d. A transfer between joint tenants or tenants in common.
 - e. A transfer made to a spouse, or to a person in the lineal line of consanguinity of a person making the transfer.
 - f. A transfer between spouses resulting from a decree of dissolution of marriage, a decree of legal separation, or a property settlement agreement which is incidental to the decree, including a decree ordered pursuant to chapter 598.
 - g. A transfer to or from the state, a political subdivision of the state, another state, or the United States.

h. A transfer by quitclaim deed.

i. A transfer by a power of attorney.

5. "*Transferee*" means a person who is acquiring real property as provided in an instrument containing the power to transfer real estate, including an instrument described in section 558.1.

6. "*Transferor*" means a person who is transferring real property as provided in an instrument containing the power to transfer real estate, including an instrument described in section 558.1.

558A.2 Procedures.

1. A person interested in transferring real property, or a broker or salesperson acting on behalf of the person, shall deliver a written disclosure statement to a person interested in being transferred the real property. The disclosure statement must be delivered prior to either the transferor making a written offer for the transfer of the real property, or accepting a written offer for the transfer of the real property.

2. The disclosure statement shall be made by personal delivery or by certified or registered mail to the transferee. The delivery may be made to the spouse of the transferee, unless otherwise provided by the parties. If the disclosure statement is not timely delivered, the transferee may withdraw the offer or revoke the acceptance without liability, within three days following personal delivery of the statement or five days following delivery by mail.

3. The disclosure statement may be filed with the county recorder with instruments affecting the transfer of real estate. However, the failure to file the statement shall not cause a defect in the title to the property.

558A.3 Good faith and amendments.

1. All information required by this section and rules adopted by the commission shall be disclosed in good faith. If at the time the disclosure is required to be made, information required to be disclosed is not known or available to the transferor, and a reasonable effort has been made to ascertain the information, an approximation of the information may be used. The information shall be identified as an approximation. The approximation shall be based on the best information available at the time.

2. A disclosure statement shall be amended, if information disclosed in the statement is or becomes inaccurate or misleading, or is supplemented. The amended statement shall be subject to the same procedures as the original disclosure statement as provided in this chapter. However, the statement is not required to be amended if either of the following applies:

a. The information disclosed in conformance with this chapter is subsequently rendered inaccurate as a result of an act, occurrence, or agreement subsequent to the delivery of the disclosure statement.

b. The information is based on information of a public agency, including the state, a political subdivision of the state, or the United States. The information shall be deemed to be accurate and complete, unless the transferor or the broker or salesperson has actual knowledge of an error, inaccuracy, or omission, or fails to exercise ordinary care in obtaining the information.

558A.4 Required information.

1. The disclosure statement shall include information relating to the condition and important characteristics of the property and structures located on the property, including significant defects in the structural integrity of the structure, as provided in rules which shall be adopted by the real estate commission pursuant to section 543B.9. The disclosure statement shall also include whether the property is located in a real estate improvement district and the amount of any special assessment against the property under chapter 358C. The rules may require the disclosure to include information relating to the property's zoning classification; the condition of plumbing, heating, or electrical systems; or the presence of pests.

2. The disclosure statement may include a report or written opinion prepared by a person qualified to make judgment based on education or experience, as provided by rules adopted by the commission, including but not limited to a land surveyor licensed pursuant to chapter 542B, a geologist, a structural pest control operator licensed pursuant to section 206.6, or a building contractor. The report or opinion on a matter within the scope of the person's practice, profession, or expertise shall satisfy the requirements of this section or rules adopted by the commission regarding that matter required to be disclosed. If the report or opinion is in response to a request made for purposes of satisfying the disclosure statement, the report or opinion shall indicate which part of the disclosure statement the report or opinion satisfies.

558A.5 Agency.

1. A person other than a broker or salesperson acting in the capacity of an agent in the transfer of real property shall not be deemed to be an agent of the transferor or transferee for purposes of this chapter, unless the person is granted powers of attorney or is empowered as an agent, as expressly provided in writing, and is subject to any other applicable requirements as provided by law.

2. A broker or salesperson representing the transferor shall deliver the disclosure statement to the transferee as required in section 558A.2, unless the transferor or transferee has instructed the broker or salesperson otherwise in writing.

558A.6 Liability under the chapter.

A person who violates this chapter shall be liable to a transferee for the amount of actual damages suffered by the transferee, but subject to the following limitations:

1. The transferor, or a broker or salesperson, shall not be liable under this chapter for the error, inaccuracy, or omission in information required in a disclosure statement, unless that person has actual knowledge of the inaccuracy, or fails to exercise ordinary care in obtaining the information.

2. The person submitting a report or opinion within the scope of the person's practice, profession, or expertise, as provided in section 558A.4, for purposes of satisfying the disclosure statement, shall not be liable under this chapter for any matter other than a matter within the person's practice, profession, or expertise, and which is required by the disclosure statement, unless the person failed to use care ordinary in the person's profession, practice, or area of expertise in preparing the information.

558A.7 Chapter is not limiting.

The duties imposed upon persons under this chapter or under rules adopted by the real estate commission shall not limit or abridge any duty, requirement, obligation, or liability for disclosure created by another provision of law, or under a contract between parties.

558A.8 Validity of a transfer.

A transfer under this chapter shall not be invalidated solely because of a failure of a person to comply with a provision of this chapter.