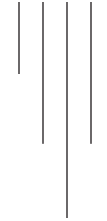


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and
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North Dakota Century Code

CHAPTER 43-23
STATE REAL ESTATE COMMISSION

Section

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43-23-01. Real estate commission—Members. The state real estate commission consists of five members, three of whom must be active real estate brokers, appointed by the governor. The commission shall organize by the election of a chairman.

43-23-02. Commission—Term—Duties—Records. The governor shall appoint each member of the commission for a term of five years. Terms must be staggered so the term of one member expires each year. At the expiration of the term of any member of the commission, the governor shall appoint a successor for a term of five years. In the event of a vacancy on the commission for any reason the governor shall appoint a member for the unexpired term of that member.

A majority of the commission, in a duly assembled meeting, may perform and exercise all of the duties and powers devolving on the commission. The commission may submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04.

The commission shall adopt a seal with North Dakota real estate commission engraved on the seal, 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 such commission, must be received in evidence in all courts equally and with like effect as the original.

43-23-03. Commission office-Executive Director. The commission shall employ an executive director who shall furnish bond as required by the commission and who shall keep a record of all proceedings, transactions, communications, and official acts of the commission, be custodian of all moneys received for licenses which must, by the executive director, be deposited for safekeeping in depositories designated by the commission. The executive director must be custodian of all records of the commission and perform such other duties as the commission may require. The commission is authorized to fix the salary of the executive director, to employ such other employees as may be necessary to properly carry out the provisions of this chapter, to fix salaries and prescribe duties of such employees and to make such other expenditures as are necessary to carry out the provisions of this chapter. The commission shall meet annually and upon call by the executive director upon a written request of three or more members of the commission. The place of meeting of the said commission must be at the office of the executive director. The location of the office of the executive director must be at such places within the state as the commission may designate. The commission shall maintain all files, records, and property of the commission at the office of the executive director.

43-23-04. Commission—Compensation. The members of the commission shall receive fifty dollars for each day actually engaged in the service of the commission and must be paid actual and necessary traveling expenses to be paid only from the fund derived from fees collected in the administration of this chapter. All moneys or fees collected or received by the commission must be deposited and disbursed in accordance with section 54-44-12.

43-23-05. Real estate license required. No person may act as a real estate broker or real estate salesperson, or advertise or assume to act as such real estate broker or real estate salesperson, without a license issued by the real estate commission. No person is entitled to collect any fees, compensation, or commission as a real estate broker or real estate salesperson without having first complied with the provisions of this chapter. No copartnership, association, corporation, or limited liability company may be granted a license, unless at least one partner, shareholder, member, manager, or officer of the copartnership, association, corporation, or limited liability company, actually engaged as a real estate broker or real estate salesperson as defined herein, holds a license as a real estate broker, and unless every employee who acts as a real estate salesperson for such copartnership, association, corporation, or limited liability company holds a license as a real estate salesperson.

43-23-05.1. Organization of salesperson or broker associate permitted to be licensed—Fees.

1. The commission may license an organization of a salesperson or broker associate if:
 - a. The organization is owned solely by an individual who is licensed as a salesperson or broker associate, or by that individual and that individual's spouse, or by that individual and other salespersons and broker associates within the same firm as that individual;
 - b. The organization does not engage in any real estate transactions as a third-party agent or in any other capacity requiring a license under this chapter; and
 - c. The organization does not advertise or otherwise portray to the public that the organization is a real estate broker or real estate brokerage firm.
2. The employing or associating broker of a salesperson or broker associate who is part of an organization is not relieved of any obligation to supervise the employed or associated salesperson or broker associate or of any other requirements under this chapter.
3. An individual who forms an organization is not by nature of that act relieved of any personal liability for licensed activities.
4. The commission may adopt rules establishing a one-time license fee for an organization licensed as a salesperson or broker associate.

43-23-06. Definitions.

Repealed by S.L. 1977, ch. 405, § 2.

43-23-06.1. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Appointed agent" means a licensee appointed by a designated broker of the licensee's real estate brokerage firm to act solely for a client of that brokerage firm to the exclusion of other licensees of that brokerage firm.
2. "Client" means a person that has entered a written agency agreement with a real estate brokerage firm.
3. "Commission" means the North Dakota real estate commission.
4. "Customer" means a buyer, prospective buyer, seller, lessee, or lessor that is not represented by that real estate brokerage firm in a real property transaction.
5. "Designated broker" means a licensee designated by a real estate brokerage firm to act on behalf of the brokerage firm.
6. "Dual agency" means a situation in which a real estate brokerage firm or the real estate brokerage firm's licensees owe a duty to more than one party in a real estate transaction. Dual agency is established only as follows:
 - a. When one licensee represents both the buyer and the seller in a real estate transaction; or
 - b. When two or more licensees, licensed to the same broker, each represents a party to the real estate transaction."Dual agency" does not exist unless both the seller and the buyer in a real estate transaction have written agency agreements with the same real estate brokerage firm. For purposes of "dual agency" a subagency arrangement is not a written agency agreement.
7. "Licensee" means a real estate broker, an associate real estate broker, or a real estate salesperson who is associated with a real estate brokerage firm.
8. "Real estate", "real property", "realty", or words of like import, means any interest or estate in land, including leaseholds, whether such interest or estate is corporeal, incorporeal, freehold, or nonfreehold, and whether situated in this state or elsewhere; provided, however, that the meaning as used in this chapter does not include oil, gas, or mineral leases, nor does it include any other mineral leasehold, mineral estate, or mineral interest of any nature whatsoever.

9. "Real estate broker", or "broker", means any person that, for another, for a fee, commission, salary, or other consideration, or with the intention or expectation of receiving or collecting such compensation from another, engages in or offers or attempts to engage in, either directly or indirectly by a continuing course of conduct or by a single act or transaction, any of the following acts:
 - a. Lists, offers, attempts, or agrees to list real estate or any interest in that real estate, or any improvements affixed on that real estate for sale, exchange, or lease.
 - b. Sells, exchanges, purchases, or leases real estate or any interest in that real estate, or any improvements affixed on that real estate.
 - c. Offers to sell, exchange, purchase, or lease real estate or any interest in that real estate, or any improvements affixed on that real estate.
 - d. Negotiates or offers, attempts, or agrees to negotiate the sale, exchange, purchase, or leasing of real estate or any interest in that real estate, or any improvements affixed on that real estate.
 - e. Buys, sells, offers to buy or sell, or otherwise deals in options on real estate or any interest in that real estate, or any improvements on that real estate.
 - f. Who is a licensee under this chapter and performs any of the acts set out in this subsection while acting in the licensee's own behalf.
 - g. Advertises or holds out as being engaged in the business of buying, selling, exchanging, or leasing of real estate or any interest in that real estate, or any improvements on that real estate.
 - h. Assists or directs in the procuring of prospects, calculated to result in the sale, exchange, or leasing of real estate or any interest in that real estate, or any improvements on that real estate.
10. "Real estate brokerage firm" means a person that is providing real estate brokerage services through that person's licensees and which is licensed by the commission as a real estate brokerage firm.
11. "Real estate salesperson" means any person that for a fee, compensation, salary, or other consideration, or in the expectation or upon the promise of that compensation, is employed or engaged by a licensed real estate broker to do any act or deal in any transaction as provided in subsection 9 for or on behalf of such licensed real estate broker.

43-23-07. Real estate brokers and salespersons—Exceptions. The term "real estate broker" or "real estate salesperson" does not include:

1. Any person, partnership, association, corporation, or limited liability company who is a bona fide owner or lessor or who accepts or markets leasehold interests in residential or agricultural property and performs any of the aforesaid acts with reference to property owned or leased by them, nor does it apply to regular employees thereof, when the acts are performed in the regular course of or as an incident to the management of the property and the investment therein.
2. An attorney at law, admitted to practice in this state, handling sales of real estate in the course of estate or guardianship administration in district court, or trust administration, bankruptcy proceedings, receiverships, or like actions subject to approval by a court of competent jurisdiction, or sales of real estate arising in the usual course of the practice of law.
3. Any person selling real estate as an auctioneer, provided the sale is advertised as a bona fide public auction.
4. Any bank or trust company or any of its officers or employees in the performance of their duties as an officer or employee of the bank or trust company.
5. Any person holding in good faith a duly executed power of attorney from the owner, authorizing a final consummation and execution for the sale, purchase, lease, or

exchange of real estate when such acts are not of a recurrent nature and done with the intention of evading this section.

6. Any person while acting as a receiver, trustee, administrator, executor, guardian, or under court order, or while acting under authority of a deed, trust, or will.
7. Public officers while performing their duties.

43-23-08. License Standards.

1. Licenses and the renewals thereof may be granted only to persons who bear a good reputation for honesty, truthfulness, and fair dealing and who are competent to transact the business of a real estate broker or a real estate salesperson in such manner as to safeguard the interest of the public, and whose real estate license has not been revoked in this or any other state within two years prior to date of application. To determine the competency of applicants, the commission shall prescribe and hold examinations at designated times and places.
2. In addition to the requirements established by subsection 1, an applicant for a broker's or salesperson's license must be at least eighteen years of age.
3. Every applicant for a license as a real estate broker:
 - a. Shall have been actively engaged as a licensed real estate salesperson for a period of at least one year preceding the date of application, which, beginning July 1, 1979, is increased to two years; or
 - b. Shall have had experience as determined by the commission to be substantially equal to that which a licensed real estate salesperson would ordinarily receive during a period of one year, which, beginning July 1, 1979, is increased to two years.
4. As a prerequisite for licensure, an applicant for a salesperson's license shall furnish to the commission evidence the applicant has successfully completed at least forty-five hours in courses of study approved by the commission. Within one year after initial licensure as a salesperson, the salesperson's broker shall furnish to the commission evidence of the salesperson's successful completion of fifteen postlicensure hours in courses of study approved by the commission. An applicant for a broker's license must have successfully completed an additional sixty hours in courses of study approved by the commission. An applicant for a salesperson's license may take the licensing examination before fulfillment of the prerequisite educational requirement; however, the commission may not issue a salesperson's license to an applicant unless satisfactory evidence of completion of this prerequisite educational requirement is furnished to the commission. An applicant for a broker's license must have satisfactorily fulfilled the educational requirement before taking the broker's licensing examination.
5. If the commission finds that an applicant could not acquire employment as a licensed real estate salesperson because of conditions existing in the area where the salesperson resides, then the experience requirements established in subdivisions a and b of subsection 3 may be waived by the commission. The educational requirements of subsection 4 may not be waived by the commission, but guidelines may be established whereby applicants who have engaged in certain educational courses of study which are closely related to the real estate profession may be deemed to have satisfied this requirement.
6. The commission may adopt reasonable rules and regulations pursuant to the provisions of chapter 28-32 relative to procedures for licensing, approval of coursework, and for the type of certification or proof of coursework completion that must be submitted.

43-23-08.1. Conviction not bar to licensure—Exceptions. Conviction of an offense does not disqualify a person from licensure under this chapter unless the commission determines that the offense has a direct bearing upon a person's ability to serve the public as a real estate broker or salesperson, or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

43-23-08.2. License renewal—Continuing education required.

1. The commission may establish the conditions under which each applicant for renewal of a broker's or salesperson's license, in addition to the requirements of section 43-23-08, shall submit proof of participation in approved continuing education. In establishing the conditions for continuing education, the commission may determine the required number of hours, the frequency and conditions of reporting requirements, and all other terms and conditions of continuing education compliance. The commission shall set standards for the approval of lectures, seminars, courses of instruction, and correspondence courses that qualify for satisfaction of this requirement, and shall maintain a current list of lectures, seminars, courses of instruction, and correspondence courses so approved. Lectures, seminars, courses of instruction, and correspondence courses may not require passing of a test to qualify for satisfaction of this requirement. Licensees must have the option of attending an approved course of instruction in person or taking an approved correspondence course. Attendance at a course or the completion of a correspondence course must be documented in accordance with procedures established by the commission. The commission may adopt rules concerning implementation of this section pursuant to chapter 28-32.
2. A license may not be renewed by the commission unless the proper certification showing fulfillment of the continuing education requirements of this section and the appropriate licensing fees are submitted to the commission in accordance with section 43-23-13.1.
3. The commission may exempt licensees from the continuing education requirements of this section for reasons relating to the licensee's health, military service, or for other good cause. Licensees who have held a real estate license for fifteen continuous years on January 1, 1984, are exempt from the requirements of this section.

43-23-08.3. Disclosure of sexual offenders. A licensee is not liable for any action resulting from any disclosure or nondisclosure relating to the registration of sexual offenders under section 12.1-32-15.

43-23-08.4. Criminal history record checks. The commission may require an applicant for licensure or a licensee whose licensure is subject to investigation by the commission to submit to a statewide and nationwide criminal history record check. The nationwide criminal history record check must be conducted in the manner provided by section 12-60-24. All costs associated with obtaining a background check are the responsibility of the applicant or licensee.

43-23-09. License application. Every application for a real estate broker's license or a real estate salesperson's license must be in writing upon blanks prepared by the commission and contain such data and information as the commission may require.

43-23-10. Nonresident brokers—Reciprocity—Consent to Service. A nonresident broker regularly engaged in the real estate business as a vocation and who maintains a definite place of business and is licensed in some other state, which offers the same privileges to the licensed brokers of this state, may not be required to maintain a place of business within this state. The commission shall recognize the license issued to a real estate broker by another state as satisfactorily qualifying the nonresident broker for license as a broker; provided, that the nonresident broker has qualified for license in the broker's own state and also that the other state permits licenses to be issued to licensed brokers in this state. Every nonresident applicant shall file an irrevocable consent that suits and actions may be commenced against such applicant in the proper court of any county of the state in which a claim for relief may arise, in which the plaintiff may reside, by the service of any process or pleading authorized by the laws of this state, on any member of the commission, or the executive director,

said consent stipulating and agreeing that such service of such process or pleading shall be taken and held in all courts to be as valid and binding as if due service had been made upon said applicant in this state. The consent must be duly acknowledged. Any service of process or pleading must be by duplicate copies, one of which must be filed in the office of the commission and the other immediately forwarded by registered mail to the last-known main office of the applicant against whom said process or pleading is directed, and no default in any such proceedings or action may be taken except upon affidavit or certificate of the commission or the executive director, that a copy of said process or pleading was mailed to the defendant as herein required, and no judgment by default may be taken in any such action or proceeding until after thirty days from the date of mailing of such process or pleading to the nonresident defendant.

43-23-11. License refusal, revocation - Hearing - Appeal.

Repealed by S.L. 1973, ch. 357, § 2.

43-23-11.1. Investigations, grounds for refusal, suspension or revocation of license —Hearing—Appeal.

1. The commission upon its own motion may, and upon the verified complaint in writing of any person shall, investigate the activities of any licensee or any person who assumes to act in such capacity within the state, and has the power to suspend or revoke a license, impose a monetary fine and actual costs incurred by the commission in the investigation and prosecution of the complaint, require course attendance, or issue a letter of reprimand, or any combination thereof, when the licensee, in performing or attempting to perform any of the acts included within the scope of this chapter, has performed one or more of the following:
 - a. Making a material false statement in the licensee's application for a license or in any information furnished to the commission.
 - b. Making any substantial and willful misrepresentation with reference to a real estate transaction which is injurious to any party.
 - c. Making any false promise of a character such as to influence, persuade, or induce a party to a real estate transaction to that person's injury or damage.
 - d. Acting for more than one party in a transaction without the knowledge and consent of all parties to that transaction for whom the licensee acts.
 - e. Failure to account for or to remit, within a reasonable time, any moneys coming into the licensee's possession belonging to others; commingling funds of others with the licensee's own, failing to keep such funds of others in an escrow or trust account with a bank or other recognized depository in this state, or keeping records relative to the deposit, which must contain such information as may be prescribed by the rules and regulations of the commission relative thereto.
 - f. Been convicted or pleaded guilty or nolo contendere before any court of any felony, or of a misdemeanor involving theft, forgery, embezzlement, obtaining money under false pretenses, bribery, larceny, extortion, conspiracy to defraud, or other similar offense. A certified copy of the record of conviction is conclusive evidence of conviction in such cases.
 - g. Claiming or taking of any secret or undisclosed amount of compensation or commission or the failure of a licensee to reveal to the licensee's principal or employer the full amount of such licensee's compensation or commission in connection with any acts for which a license is required under this chapter.
 - h. Failing or refusing upon demand to produce any document, book, or record in the licensee's possession or under that person's control, concerning any real estate transaction under investigation by the commission.
 - i. Offering real property for sale or lease without the knowledge and consent of the owner

or the owner's authorized agent or on any terms other than those authorized by the owner or agent.

- j. Refusing, because of race, color, national origin, or ethnic group, to show, sell, lease, or rent any real estate to prospective renters, lessees, or purchasers.
 - k. Failing or refusing upon demand to furnish copies of any document pertaining to any transaction dealing with real estate to any person whose signature is affixed thereto.
 - l. Paying compensation or commission in connection with any real estate sale, lease, or other transaction to any person who is not licensed as a real estate broker or real estate salesperson under this chapter.
 - m. Failing to disclose to an owner the licensee's intention or true position if the licensee directly or indirectly through a third party purchases for the licensee or acquires or intends to acquire any interest in or any option to purchase property which has been listed with the licensee's office for sale or lease.
 - n. Failure to include a fixed date of expiration in any written listing agreement and failure to leave a copy of such agreement with the principal.
 - o. Failure by a broker to deliver to the party or parties represented by the broker a complete detailed closing statement in every real estate transaction, at the time said transaction is consummated, showing all of the receipts and disbursements handled by such broker for the party or parties represented by the broker, and to retain true copies of such statements in the broker's files.
 - p. Violating any provisions of this chapter or rule or regulation promulgated by the commission.
 - q. Violation of any provision of such realtor's code of ethics as the commission has or may promulgate and adopt.
 - r. Accepting a commission or valuable consideration as a real estate salesperson for the performance of any of the acts specified in this chapter, or by rule or regulation of the commission, from any person except the licensed real estate broker under whom the individual is licensed as a salesperson.
 - s. If the licensee is a broker, allowing any unlicensed salesperson to do any act or engage in any activity regulated by this chapter or under rule or regulation of the commission, which is carried on in the name of or under the authority of the broker.
 - t. Failure of a salesperson to place with that person's employing broker for deposit in the brokerage trust account all real estate trust moneys received by the salesperson within twenty-four hours of the time of receipt; or failure of the employing broker to place such moneys for deposit within twenty-four hours of the time of receipt from the salesperson. Provided that if trust money is received on a day prior to a holiday or on another day prior to which the depository is closed where the trust fund is maintained, the moneys must then be deposited during the next business day of the depository.
 - u. Failure of the licensee to reduce an offer to writing when a proposed purchaser requests that such offer be submitted to the seller, or failure of the licensee to submit all offers to a seller when such offers are received prior to the seller accepting an offer in writing and until the broker has knowledge of such acceptance.
 - v. Any other conduct, whether of the same or of a different character than specified in this subsection, which constitutes dishonesty or fraudulent conduct, whether arising within or without the pursuit of that person's licensed privilege.
 - w. Any conduct which in the determination of the commission does not meet the generally accepted standard of expertise, care, or professional ability expected of real estate brokers or salespersons, provided that any disciplinary measures by the commission under this subdivision must be limited to the issuance of a letter of reprimand to the offending licensee.
2. If the commission declines or fails to approve an application submitted to it, it shall

immediately give notice of that fact to the applicant, and upon request from such applicant, filed within twenty days after the receipt of such notice, shall fix a time and place for hearing, of which twenty days' notice must be given to such applicant and to other persons interested or protesting, to offer evidence relating to the application. In such cases the commission shall fix the time for such hearing on a date within sixty days from receipt of the request for the particular hearing, provided the time of hearing may be continued from time to time with the consent of the applicant. As a result of such hearing, the commission may either approve the application if all other applicable provisions of this chapter have been met, and permit the applicant to take the examination to determine whether the applicant shall be licensed, or it may sustain its prior decision refusing to approve the application.

3. A license may not be revoked or suspended, a monetary fine or actual costs may not be imposed, course attendance may not be required, nor any letter of reprimand issued except after hearing before the commission with a copy of the charges having been duly served upon the licensee and upon sustaining of the charges for suspension, revocation, fine, payment of actual costs incurred, required course attendance, or reprimand. The provisions of chapter 28-32 apply to and govern all proceedings for suspension, revocation, fine, payment of actual costs incurred, required course attendance, or reprimand of licenses or licensees.
4. In any order or decision issued by the commission in resolution of a disciplinary proceeding in which disciplinary action is imposed against a licensee, the commission may direct the licensee to pay a fine not to exceed two thousand five hundred dollars and actual costs, including attorney's fees, incurred by the commission in the investigation and prosecution of the case. All fines collected must be deposited in the commission's license fee account.

43-23-12. Broker's place of business—License of employed salesperson.

1. Every person, partnership, association, corporation, or limited liability company licensed as a real estate broker is required to have and maintain a definite place of business within this state, for the transaction of real estate business. The certificate of registration as broker and the certificate of each real estate salesperson employed by such broker must be prominently displayed in said office. The said place of business must be designated in the license, and no license issued under the authority of this chapter may authorize the licensee to transact business at any other address. In case of removal from the designated address, the licensee shall make application to the commission before said removal or within ten days after said removal, designating the new location of such office, whereupon the commission shall forthwith issue a new license for the new location for the unexpired period. The broker's home may qualify as such place of business.
2. All licenses issued to real estate salespersons shall designate the employer of such salespersons. Prompt notice in writing, within ten days, must be given to the commission by any real estate salesperson of a change of employer, and of the name of the licensed broker into whose employ the salesperson is about to enter, and a new license shall thereupon be issued by the commission to such salesperson for the unexpired term of the original license, upon the return to the commission of the license previously issued. The change of employer or employment by any licensed real estate salesperson, without notice to the commission as aforesaid, shall automatically cancel that person's license. Upon termination of a real estate salesperson's employment, the broker employer shall forthwith return the salesperson's license to the commission for cancellation. It is unlawful for any real estate salesperson to perform any of the acts contemplated by this chapter either directly or indirectly after that person's employment has been terminated and license as a salesperson has been returned for cancellation, until said license has been reissued by the commission.

43-23-12.1. Real estate brokerage firm - Duties required.

1. A real estate brokerage firm and the real estate brokerage firm's licensees, which provide services through a written agency agreement for a client, are bound to that client by the duties of loyalty, obedience, disclosure, confidentiality, reasonable care, diligence, and accounting, subject to the provisions of this chapter and subject to any rules adopted under this chapter. The agency relationship, which must be established through a written agency agreement, may be a seller agency, a buyer agency, a dual agency, an appointed agency, a subagency, or another form of agency relationship. If a different relationship, including a nonagency relationship with a customer, between the real estate brokerage firm and the person for which the real estate brokerage firm performs the services is intended, the relationship must be disclosed in writing pursuant to rules adopted by the board.
2. If a buyer, prospective buyer, or seller is not represented by a real estate brokerage firm in the real property transaction, that buyer or seller remains a customer, and, as to that customer, the real estate brokerage firm and the real estate brokerage firm's licensees are nonagents that owe the following legal duties: to perform customary acts typically performed by real estate licensees in assisting a transaction to the transaction's closing or conclusion if these acts are to assist the customer for which the services are directly provided; to perform these acts with honesty and good faith; and to disclose to the customer any adverse material facts actually known by the licensee which pertain to the title of the real property, the physical condition of the real property, and defects in the real property. These limited duties are subordinate to any duties the real estate brokerage firm and the real estate brokerage firm's licensees owe to a client in the same transaction.
3. Unless otherwise agreed in writing, a real estate brokerage firm and the real estate brokerage firm's licensees are not obligated to a client, to a customer, or to any other person to discover defects in any real property, to verify the ownership of any real property, or to independently verify the accuracy or completeness of any statement or representation made by any person other than the real estate brokerage firm and the real estate brokerage firm's licensees involved in the transaction under question.
4. Unless the licensee is directly involved in a transaction regarding the affected real property, this section does not result in imputing knowledge, regarding the affected real property, of one licensee within a real estate brokerage firm to another licensee within the same real estate brokerage firm or in imposing a duty upon a licensee within a real estate brokerage firm to disclose facts that are known by that licensee regarding the affected real property to another licensee within the same real estate brokerage firm.
5. If a real estate brokerage firm and the real estate brokerage firm's licensees represent two or more buyers or lessees as clients that desire to make an offer for the purchase or lease of the same real property, the real estate brokerage firm and the real estate brokerage firm's licensees do not breach any duty by assisting such clients with multiple offers, even though the interests of such clients are competing, and are not required to disclose the existence of competing offers, except as otherwise set forth under this subsection. The real estate brokerage firm and the real estate brokerage firm's licensees shall continue to honor agency duties to such clients, except as limited under this subsection. However, if an individual licensee has a written agency agreement with two or more buyers that desire to make an offer for the purchase or lease of the same real property, that licensee shall disclose to those competing buyer clients the fact that a competing written offer has been submitted by another buyer client of that licensee.
6. If a real estate brokerage firm and the real estate brokerage firm's licensees represent two or more sellers or lessors as clients that desire to offer competing real property for sale or lease, the real estate brokerage firm and the real estate brokerage firm's licensees do not breach any duty to such clients by performing such services, even though the interests

of such clients are competing. In such event, the real estate brokerage firm and the real estate brokerage firm's licensees shall continue to honor agency duties to such clients, except as limited under this subsection.

43-23-12.2. Duties supersede common law.

1. The duties of a real estate brokerage firm, and the firm's licensees, as specified in this chapter or in rules adopted to implement this chapter, supersede any fiduciary duties of that real estate brokerage firm and the firm's licensees, to a person 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 in rules adopted to implement this chapter.
2. A client is not liable for a wrongful act, an error, an omission, or a misrepresentation made by a licensee in connection with the licensee providing brokerage services for the client, including brokerage services provided under a subagency relationship, unless the client knows or should have known of the wrongful act, error, omission, or misrepresentation or unless the licensee is repeating a misrepresentation made by the client. This subsection supersedes any conflicting common-law duty of the client.
3. A real estate brokerage firm that is providing brokerage services to a client is not liable for a wrongful act, an error, an omission, or a misrepresentation made by the client, listing agent of another real estate brokerage firm, or subagent of another real estate brokerage firm, unless the real estate brokerage firm knew or should have known of the wrongful act, error, omission, or misrepresentation or unless the client, listing agent of another real estate brokerage firm, or subagent of another real estate brokerage firm is repeating a misrepresentation made by the real estate brokerage firm.
4. This section does not limit the liability of a licensee under section 43-23-11.1 nor of a client for substantial and willful misrepresentations made in reference to a real estate transaction. As used in this section, the term "real estate brokerage firm" includes the firm and brokers and agents who work for the firm.

43-23-12.3. Brokerage firm may appoint agents.

1. A real estate brokerage firm, through a designated broker, may appoint in writing to a client the licensee or licensees within the brokerage firm who will act as appointed agent of that client to the exclusion of all other licensees within the brokerage firm.
2. If a real estate brokerage firm appoints an appointed agent for clients of the agency who are, or may be, parties in the same real estate transaction, the brokerage firm and its licensees are not dual agents as to those clients, and there is no imputation of knowledge or information among or between said clients, the real estate brokerage firm, and the appointed agents.
3. Nothing in this section prevents a real estate brokerage firm from entering a dual agency relationship with its clients after complying with any disclosure requirements provided by this chapter or by rules adopted under this chapter.

43-23-13. Fees. Fees for real estate brokers and real estate salespersons are as follows:

1. A fee of not more than two hundred dollars, as set by the commission, must accompany an application for an individual's real estate broker's license and for each annual renewal of the license.
2. For each license issued to a partnership, association, corporation, limited liability company, trust, cooperative, or other firm or entity, foreign or domestic, and for each annual renewal of the license, a fee of not more than two hundred dollars, as set by the commission.
3. For an individual's real estate salesperson's license and for each annual renewal of the license, a fee of not more than two hundred dollars, as set by the commission.
4. The commission shall set and collect reasonable fees to help offset the cost of operating the commission.

43-23-13.1. License renewal. Every person licensed to practice as a real estate broker or real estate salesperson must register annually with the commission and pay the appropriate annual renewal fee as provided in section 43-23-13. The application for renewal must be accompanied by such certification as required by this chapter and rules of the commission to show compliance with the educational requirements of sections 43-23-08 and 43-23-08.2, and is to be submitted to the commission with the appropriate fee no later than ~~December thirty-first of each year~~ **the application deadline set by the commission**. A licensee who fails to file a timely application for the renewal of any license and pay the renewal fee **on or before the application deadline** may file a late renewal application, together with the required educational certification, before March first of the subsequent year and shall pay, in addition to the renewal fee, a late fee as set by the commission for each month or fraction thereof after ~~January first~~ **the application deadline**. Any license not renewed by March first must be canceled. The cancellation must be performed without any notice or opportunity for hearing. Any person whose license has been canceled and who desires relicensure must be required to satisfy the application and examination requirements for prospective licensees in accordance with this chapter and rules of the commission.

No licensee may engage in any activity after December thirty-first of any year for which a license is required under this chapter unless that person's license has been renewed by the commission.

43-23-14. Fund handling by broker.

Repealed by S.L. 1973, ch. 358, § 2.

43-23-14.1. Handling of funds by brokers. Except as otherwise provided in this section, every broker shall, at all times, maintain in the broker's name or firm name, a separate trust account designated as such in a federally insured financial institution in this state in which the broker shall immediately place as a demand deposit all funds not the broker's own coming into the broker's possession, in accordance with rules adopted by the commission. This requirement extends to funds in which the broker may have some future interest or claim and includes earnest money deposits. Provided, the deposit of funds may be made in an interest-bearing account in a federally insured bank, trust company, savings and loan association, or credit union if all parties having an interest in the funds have agreed in writing and if a copy of the agreement is maintained on file by the broker. A broker may not commingle the broker's personal funds or other funds in a trust account, except 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 must be specifically identified and deposited to cover service charges related to the trust account. In conjunction with the account, the broker shall maintain at the broker's usual place of business, books, records, contracts, and other necessary documents so that the adequacy of the account may be determined at any time. Trust accounts and other records must be open to inspection by the commission and its duly authorized agents at all times during regular business hours at the broker's usual place of business.

A broker who does not accept trust funds in real estate brokerage transactions and who has applied for and received a waiver from the real estate commission is not required to maintain a designated trust account. However, if a broker does not maintain a trust account and later receives trust funds in a real estate brokerage transaction, the broker shall open a designated trust account as required by this section and deposit any trust funds in accordance with rules adopted by the commission.

43-23-15. Real estate courses—Studies.

1. The commission may conduct or hold or assist in conducting or holding real estate courses or institutes, and incur and pay the necessary expenses in connection therewith, which courses or institutes must be open to any licensee without any charge or fee.

2. The commission may assist libraries, real estate brokers and real estate salespersons, and institutes and foundations, with financial aid or otherwise, in providing texts, sponsoring studies, surveys, and programs for the benefit of real estate and the elevation of the real estate business.

43-23-16. Licensee list. The executive director shall publish, at least annually, a list of the names and addresses of all licensees licensed by the board under the provisions of this chapter, together with such other information relative to the enforcement of the provisions of this chapter as the board may deem of interest to the public. One of such lists must be mailed to the recorder in each county, unless the board of county commissioners designates a different official, and must be held as a public record. Such lists must also be provided by the executive director to any person in this state upon request, and to all licensed brokers without charge.

43-23-17. Penalty. Any person violating section 43-23-05 or **is guilty of a class B misdemeanor. Any person violating section** 43-23-14.1 is guilty of an infraction.

43-23-18. Injunctions authorized to enforce law. If any person or entity has engaged in any act or practice that constitutes or will constitute a violation of this chapter, the commission may commence an action in the district court of the county in which the person or entity resides or in the district court of the county in which the act or practice occurred for an injunction to enforce compliance with this chapter or rules adopted by the commission. The commission is not required to give any bond for commencing this action. Upon a showing that the person or entity has engaged in any act or practice in violation of this chapter or rules adopted by the commission, the district court may enjoin the act or practice and may make any order necessary to conserve, protect, and disburse any funds involved.

43-23-19. Errors and omissions insurance required of salespersons and brokers—Rules. The real estate commission shall adopt rules pursuant to chapter 28-32 requiring as a condition of licensure that, effective January 1, 2002, and thereafter, all real estate salespersons and brokers, except those who hold inactive licenses, carry errors and omissions insurance covering all activities contemplated under this chapter.

43-23-20. Group insurance coverage authorized -Independent errors and omissions coverage. The real estate commission may negotiate by bid with an insurance provider for a group policy under which coverage is available to all licensees with no right on the part of the insurer to cancel coverage provided to any licensee, except as provided by rules adopted by the commission. A licensee may obtain errors and omissions insurance independently if the coverage complies with the minimum requirements established by the commission.

43-23-21. Commission to determine conditions of errors and omissions coverage. The real estate commission shall determine the terms and conditions of errors and omissions coverage required by this chapter, including the minimum limits of coverage, the permissible deductible, and the permissible exceptions.

43-23-22. Notice of terms and conditions of errors and omissions—Certificate of coverage. Each licensee must be notified of the required terms and conditions of coverage at least thirty days before the annual license renewal date. A certificate of coverage, showing compliance with the required terms and conditions of coverage, must be filed annually with the real estate commission by each licensee who elects not to participate in the group insurance program administered by the real estate commission.

43-23-23. Errors and omissions coverage not required if premium limit unobtainable. If the real estate commission is unable to obtain errors and omissions insurance coverage at a reasonable premium, the errors and omissions insurance requirement of this section does not apply during the year for which coverage cannot be obtained.

CHAPTER 43-23.1
SUBDIVIDED LANDS DISPOSITION ACT

Section

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43-23.1-01. Short title. This chapter must be known and may be cited as the “Subdivided Lands Disposition Act”.

43-23.1-02. Definitions. When used in this chapter, unless the context otherwise requires:

1. “Commission” means the state real estate commission.
2. “Disposition” includes sale, lease, assignment, award by lottery, or any other transaction concerning a subdivision, if undertaken for gain or profit.
3. “Offer” includes any inducement, solicitation, or attempt to encourage a person to acquire an interest in land, if undertaken for gain or profit.
4. “Person” means an individual, corporation, limited liability company, government, or governmental subdivision or agency, business trust, estate, trust, partnership, unincorporated association, two or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity.
5. “Purchaser” means a person who acquires or attempts to acquire or succeeds to an interest in land.
6. “Subdivider” means any owner of subdivided land who offers it for disposition or the principal agent of an inactive owner.
7. “Subdivision” and “subdivided lands” means any land situated outside the state of North Dakota which is divided or is proposed to be divided for the purpose of disposition into five or more lots, parcels, units, or interests and also includes any land, whether contiguous or not, if five or more lots, parcels, units, or interests are offered as a part of a common promotional plan of advertising and sale.

43-23.1-03. Administration of chapter. This chapter must be administered by the state real estate commission.

43-23.1-04. Prohibitions on dispositions of interests in subdivisions. Unless the subdivided lands or the transaction is exempt under section 43-23.1-05, it is unlawful for any person in this state:

1. To offer or to dispose of any interest in subdivided lands located without this state prior to the time that the subdivided lands are registered in accordance with this chapter.
2. To dispose of any interest in subdivided lands unless a current public offering statement is delivered to the purchaser and the purchaser is afforded a reasonable opportunity to examine the public offering statement prior to the disposition.

43-23.1-05. Exemptions.

1. Unless the method of disposition is adopted for the purpose of evasion of this chapter, the registration provisions of this chapter do not apply to offers or disposition of an interest in land:
 - a. By a purchaser of subdivided lands for the purchaser's own account in a single or isolated transaction;
 - b. If fewer than five separate lots, parcels, units, or interests in subdivided lands are offered by a person in a period of twelve months;
 - c. To persons who are engaged in the business of construction of buildings for resale or to persons who acquire an interest in subdivided lands for the purpose of engaging, and do engage, in the business of construction of buildings for resale;
 - d. Pursuant to court order;
 - e. By any government or government agency; or
 - f. As cemetery lots or interests.
2. Unless the method of disposition is adopted for the purpose of evasion of this chapter, the registration provisions of this chapter do not apply to:
 - a. Offers and dispositions of securities currently registered with the North Dakota securities commissioner;
 - b. A subdivision as to which the plan of disposition is to dispose to ten or fewer persons; or
 - c. A subdivision as to which the commission has granted an exemption as provided in section 43-23.1-11.
3. Unless the method of disposition is adopted for the purpose of evasion of this chapter, the registration provisions of this chapter do not apply to the sale or lease of any improved land on which there is a residential, commercial condominium, or industrial building or the sale or lease of land under a contract obligating the seller or lessor to erect such a building thereon within a period of two years.

43-23.1-06. Application for registration.

1. The application for registration of subdivided lands shall be filed as prescribed by the commission and shall contain the following documents and information:
 - a. An irrevocable appointment of the commission to receive service of any lawful process in any noncriminal proceeding arising under this chapter against the applicant or the applicant's personal representative.
 - b. A legal description of the subdivided lands offered for registration, together with a map showing the division proposed or made, the dimensions of the lots, parcels, units, or interests, and the relation of the subdivided lands to existing streets, roads, waterways, schools, churches, shopping centers, public transportation facilities, and other offsite improvements.
 - c. The states or jurisdictions in which an application for registration or similar document

- has been filed, and any adverse order, judgment, or decree entered in connection with the subdivided lands by the regulatory authorities in each jurisdiction or by any court.
- d. The applicant's name, address, and the form, date, and jurisdiction of organization; and the address of each of its offices in this state.
 - e. The name, address, and principal occupation for the past five years of every director and officer of the applicant or person occupying a similar status or performing similar functions; the extent and nature of that person's interest in the applicant or the subdivided lands as of a specified date within thirty days of the filing of the application.
 - f. A statement, in a form acceptable to the commission, of the condition of the title to the subdivided lands including encumbrances as of a specified date within thirty days of the date of application by a title opinion of a licensed attorney, not a salaried employee, officer, or director of the applicant or owner, or by other evidence of title acceptable to the commission.
 - g. Copies of the instruments which will be delivered to a purchaser to evidence the purchaser's interest in the subdivided lands and of the contracts and other agreements which a purchaser will be required to agree to or sign.
 - h. Copies of the instruments by which the interest in the subdivided lands was acquired and a statement of any lien or encumbrance upon the title and copies of the instruments creating the lien or encumbrance, if any, with data as to recording.
 - i. If there is a lien or encumbrance affecting more than one lot, parcel, unit, or interest, a statement of the consequences for a purchaser of failure to discharge the lien or encumbrance and the steps, if any, taken to protect the purchaser in case of this eventuality.
 - j. Copies of instruments creating easements, restrictions, or other encumbrances affecting the subdivided lands.
 - k. A statement of the zoning and other governmental regulations affecting the use of the subdivided lands and also of any existing tax and existing or proposed special taxes or assessments which affect the subdivided lands.
 - l. A statement of the existing provisions for legal and physical access or, if none exists, a statement to that effect; a statement of the existing or proposed provisions for sewage disposal, water, and other public utilities in the subdivision; a statement of the improvements to be installed, the schedule for their completion, and a statement as to the provisions for improvement maintenance.
 - m. A narrative description of the promotional plan for the disposition of the subdivided lands, including the range of selling prices or rents at which it is proposed to dispose of the lots in the subdivision, together with copies of all advertising material which has been prepared for public distribution by any means of communication.
 - n. A copy of its articles of incorporation, with all amendments thereto, if the subdivider is a corporation; copies of its articles of organization, with all amendments thereto, if the subdivider is a limited liability company; copies of all instruments by which the trust is created or declared, if the subdivider is a trust; copies of its articles of partnership or association and all other papers pertaining to its organization, if the subdivider is a partnership, unincorporated association, or any other legal or commercial entity; and if the purported holder of legal title is a person other than the subdivider, copies of the above documents for such person.
 - o. The proposed public offering statement.
 - p. Such current financial statements, certified or otherwise, as the commission may require.
 - q. Such other information and such other documents and certifications as the commission may require as being reasonably necessary or appropriate for the protection of purchasers.

2. If the subdivider registers additional subdivided lands to be offered for disposition, the subdivider may consolidate the subsequent registration with any earlier registration offering subdivided lands for disposition under the same promotional plan.
3. The subdivider shall immediately report any material changes in the information contained in an application for registration.

43-23.1-07. Public offering statement.

1. A public offering statement must disclose fully and accurately the physical characteristics of the subdivided lands offered and must make known to prospective purchasers all unusual and material circumstances or features affecting the subdivided lands. The proposed public offering statement submitted to the commission must be in a form prescribed by it and must include the following:
 - a. The name and principal address of the subdivider.
 - b. A general description of the subdivided lands stating the total number of lots, parcels, units, or interests in the offering.
 - c. The significant terms of any encumbrances, easements, liens, and restrictions, including zoning and other regulations, affecting the subdivided lands and each unit or lot, and a statement of all existing taxes and existing or proposed special taxes or assessments which affect the subdivided lands.
 - d. A statement of the use for which the property is offered.
 - e. Information concerning improvements, including streets, water supply, levees, drainage control systems, irrigation systems, sewage disposal facilities, and customary utilities, and the estimated cost, date of completion, and responsibility for construction and maintenance of existing and proposed improvements which are referred to in connection with the offering or disposition of any interest in subdivided lands.
 - f. Such of the information contained in the application for registration, and any amendments thereto, and such other information as the commission may require as being necessary or appropriate in the public interest or for the protection of purchasers.
2. The public offering statement may not be used for any promotional purposes before registration of the subdivided lands and afterwards only if it is used in its entirety. No person may advertise or represent that the commission approves or recommends the subdivided lands or disposition thereof. No portion of the public offering statement may be underscored, italicized, or printed in larger or heavier or different color type than the remainder of the statement unless the commission requires it.
3. The commission may require the subdivider to alter or amend the proposed public offering statement in order to assure full and fair disclosure to prospective purchasers, and no change in the substance of the promotional plan or plan of disposition or development of the subdivision may be made after registration without notifying the commission and without making appropriate amendment of the public offering statement. A public offering statement is not current unless all amendments are incorporated.

43-23.1-08. Inquiry and examination. Upon receipt of an application for registration in proper form, the commission shall forthwith initiate an examination to determine that:

1. The subdivider can convey or cause to be conveyed the interest in subdivided lands offered for disposition if the purchaser complies with the terms of the offer, and, when appropriate, that release clauses, conveyances in trust, escrow and impoundage provisions, and other safeguards have been provided;
2. There is reasonable assurance that all proposed improvements will be completed as represented;
3. The advertising material and the general promotional plan are not false or misleading and comply with the standards prescribed by the commission in its rules and regulations and afford full and fair disclosures;

4. The subdivider has not, or if a corporation or limited liability company, its officers, managers, governors, directors, and principals have not been convicted of a crime involving land dispositions or any aspect of the land sales business in this state, the United States, or any other state or foreign country within the past ten years and has not been subject to any injunction or administrative order within the past ten years restraining a false or misleading promotional plan involving land dispositions;
5. There is no evidence which would reasonably lead the commission to believe that the subdivider, or if a corporation or limited liability company, its officers, managers, governors, directors, or principals are contemplating a fraudulent or misleading sales promotion; and
6. The public offering statement requirements of this chapter have been satisfied.

43-23.1-09. Notice of filing — Registration — Fees.

1. Upon receipt of the application for registration in proper form and of a registration fee of one hundred dollars, the commission shall issue a notice of filing to the applicant. Within ninety days from the date of the notice of filing, the commission shall enter an order registering the subdivided lands or rejecting the registration. If no order of rejection is entered within ninety days from the date of notice of filing, the land must be deemed registered unless the applicant has consented in writing to a delay.
2. If the commission affirmatively determines, upon inquiry and examination, that the requirements of section 43-23.1-08 have been met, it shall enter an order registering the subdivided lands and shall designate the form of the public offering statement.
3. If the commission determines, upon inquiry and examination, that any of the requirements of section 43-23.1-08 has not been met, the commission shall notify the applicant that the application for registration must be corrected in the particulars specified within ten days. If the requirements are not met within the time allowed, the commission shall enter an order rejecting the registration which must include the findings of fact upon which the order is based. The order rejecting the registration shall not become effective for twenty days during which time the applicant may petition for reconsideration and is entitled to a hearing.
4. Registration under this chapter is effective for a period of one year and may be renewed for additional periods of one year by filing, not later than fifteen days prior to the expiration of a registration, a renewal application in such form and containing such information as the commission shall prescribe, together with the payment of a renewal fee of one hundred dollars. The initial registration and any renewal fees may not be returned or refunded for any reason.

43-23.1-10. Annual report.

1. Within thirty days after each annual anniversary date of an order registering subdivided lands, the subdivider shall file a report in the form prescribed by the commission. The report must reflect any material changes in information contained in the original application for registration.
2. The commission, at its option, may permit the filing of annual reports within thirty days after the anniversary date of the consolidated registration in lieu of the anniversary date of the original registration.

43-23.1-11. General powers and duties.

1. The commission has the authority to promulgate, to amend, and to repeal reasonable rules and regulations for the administration and enforcement of this chapter. Such rules and regulations must include, but not be limited to, provisions for advertising standards to assure full and fair disclosure; provisions for escrow or trust agreements or other means to assure that all improvements referred to in the application for registration and advertising will be completed and that purchasers will receive the interest in land for which they

contracted; provisions for operating procedures; and such other rules and regulations as are necessary or proper to accomplish the purposes of this chapter.

2. All advertising material of any nature whatsoever prepared for use in connection with the offer and disposition of any interests in subdivided lands registered under this chapter must be submitted to and approved by the commission prior to its use.
3. As a condition precedent to the registration of any subdivided lands, the commission shall require that the subdivider file an indemnity bond running to the state of North Dakota for the use, benefit, and protection of any person and conditioned for the faithful compliance by the subdivider, the subdivider's agents and employees with all of the provisions of this chapter, and with all rules, regulations, and orders made pursuant thereto and for the faithful performance and payment of all obligations of the subdivider, the subdivider's agents and employees in connection with the registration. The indemnity bond must be of such type and in such form as must be prescribed by the commission and must be in such amount as the commission deems necessary to protect purchasers when the volume of business of the subdivider and other relevant factors are taken into consideration, but in no event less than twenty-five thousand dollars. Any such bond must have as surety thereon a surety company authorized to do business in this state.
4. Whenever it appears that a person has engaged or is about to engage in acts or practices which constitute or will constitute a violation of the provisions of this chapter or of a rule or regulation or order hereunder, the commission, with or without prior administrative proceedings, may bring an action in any district court to enjoin the acts or practices and to enforce compliance with this chapter or any rule or regulation or order hereunder. Upon a proper showing, a permanent or temporary injunction or restraining order must be granted without bond.
5. The commission may intervene in a suit involving subdivided lands. In any suit by or against a subdivider involving subdivided lands, the subdivider promptly shall furnish the commission notice of the suit and copies of all pleadings.
6. The commission may:
 - a. Accept registrations filed in other states or with the federal government;
 - b. Contract with similar agencies in this state or other jurisdictions to perform investigative functions; and
 - c. Accept grants-in-aid from any source.
7. The commission shall cooperate with similar agencies in other jurisdictions to establish uniform filing procedures and forms, uniform public offering statements, advertising standards, rules and regulations, and common administrative practices.
8. The commission may exempt a subdivision of ten or fewer lots, parcels, units, or interests from the provisions of this chapter if it determines that the plan of promotion and disposition is primarily directed to persons in the local community in which the subdivision is located.

43-23.1-12. Fraudulent practices. It is a fraudulent practice, and it is unlawful:

1. For any person knowingly to subscribe to or make or cause to be made any material false statement or representation in any application, financial statement, or other document or statement required to be filed under any provision of this chapter, or to omit to state any material statement or fact in any such document or statement which is necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading;
2. For any person, in connection with the offer, disposition, or purchase of subdivided lands, directly or indirectly, to employ any device, scheme, or artifice to defraud;
3. For any person, in connection with the offer, disposition, or purchase of subdivided lands, directly or indirectly, to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

4. For any person, in connection with the offer, disposition, or purchase of subdivided lands, directly or indirectly, to engage in any act, practice, or course of business which operates or would operate as a fraud or deception upon purchasers or the public.

43-23.1-13. Investigations and proceedings.

1. The commission shall investigate any subdivision offered for disposition in this state and may:
 - a. Rely upon any relevant information concerning a subdivision obtained from the federal housing administration, the United States veterans administration, or any other federal agency having comparable duties in relation to subdivisions;
 - b. Require the applicant to submit reports prepared by competent engineers as to any hazard to which any subdivision offered for disposition is subject or any factor which affects the utility of interests within the subdivision, and require evidence of compliance in removing or minimizing all hazards reflected in engineering reports;
 - c. Require an onsite inspection of the subdivision by a person or persons designated by it. All expenses incurred in connection with an onsite inspection must be defrayed by the applicant, and the commission shall require a deposit sufficient to defray such expenses in advance;
 - d. Make public or private investigations within or outside this state to determine whether any person has violated or is about to violate this chapter or any rule, regulation, or order hereunder, or to aid in the enforcement of this chapter or in prescribing rules and regulations and forms hereunder; and
 - e. Require or permit any person to file a statement in writing, under oath or otherwise as the commission determines, as to all the facts and circumstances concerning the matter to be investigated.
2. For the purpose of any investigation or proceeding under this chapter, the commission or any person designated by it may administer oaths or affirmations, and upon its own motion or upon the request of any party shall subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence.
3. Upon failure to obey a subpoena or to answer questions propounded by the investigator and upon reasonable notice to all persons affected thereby, the agency may apply to the district court for an order compelling compliance.
4. The commission may permit a person registered with the commission whose conduct or actions may be under investigation to waive formal proceedings and enter into a consent proceeding whereby orders, rules, or letters of censure or warning, whether formal or informal, may be entered against said person.
5. Except as otherwise provided in this chapter, all proceedings under this chapter must be in accordance with chapter 28-32.

43-23.1-14. Cease and desist orders.

1. If the commission determines after notice and hearing that a person has:
 - a. Violated any provision of this chapter;
 - b. Directly or through an agent or employee knowingly engaged in any false, deceptive, or misleading advertising, promotional, or sales methods to offer or dispose of an interest in subdivided lands;
 - c. Made any substantial change in the plan of disposition and development of the subdivided lands subsequent to the order of registration without obtaining prior written approval from the commission;

- d. Disposed of any subdivided lands which have not been registered with the commission;
or
 - e. Violated any lawful order or rule or regulation of the commission;
- it may issue an order requiring the person to cease and desist from the unlawful practice and to take such affirmative action as in the judgment of the commission will carry out the purposes of this chapter.
2. If the commission makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order, it may issue a temporary cease and desist order. Prior to issuing the temporary cease and desist order, the commission, whenever possible, by telephone or otherwise shall give notice of the proposal to issue a temporary cease and desist order to the person. Every temporary cease and desist order must include in its terms a provision that upon request a hearing will be held promptly to determine whether or not it becomes permanent.

43-23.1-15. Revocation.

1. A registration may be revoked after notice and hearing upon a written finding of fact that the subdivider has:
 - a. Failed to comply with the terms of a cease and desist order;
 - b. Been convicted of an offense determined by the commission to have a direct bearing upon a person's ability to serve the public as a real estate subdivider, or the commission determines, following conviction of any offense, that the person is not sufficiently rehabilitated under section 12.1-33-02.1;
 - c. Disposed of, concealed, or diverted any funds or assets of any person so as to defeat the rights of subdivision purchasers;
 - d. Failed faithfully to perform any stipulation or agreement made with the commission as an inducement to grant any registration, to reinstate any registration, or to approve any promotional plan or public offering statement; or
 - e. Made intentional misrepresentations or concealed material facts in an application for registration. Findings of fact, if set forth in statutory language, must be accompanied by a concise and explicit statement of the underlying facts supporting the findings.
2. If the commission finds after notice and hearing that the subdivider has been guilty of a violation for which revocation could be ordered, it may issue a cease and desist order instead.

43-23.1-16. Judicial review. A person who has exhausted all administrative remedies available within the commission and who is aggrieved by an order pertaining to registration, a cease and desist order, an order of revocation, or any other final decision of the commission is entitled to judicial review in accordance with chapter 28-32.

43-23.1-17. Real estate license required. No real estate broker, salesperson, or mortgage broker may offer or dispose of subdivided lands within or from this state, except in dispositions and transactions exempt under section 43-23.1-05, unless said real estate broker, salesperson, or mortgage broker is licensed pursuant to chapter 43-23.

43-23.1-18. Civil remedy.

1. Every disposition made in violation of any of the provisions of this chapter, or of any order issued by the commission under any of the provisions of this chapter, is voidable at the election of the purchaser. The person making such disposition, and every director, officer, salesperson, or agent of or for such person who has participated or aided in any way in making such disposition, shall be jointly and severally liable to such purchaser in any action at law in any court of competent jurisdiction for the consideration paid for the lot, parcel, unit, or interest, together with interest at the rate of six percent per year from the date of payment, property taxes and assessments paid, court costs, and reasonable attorney's fees, less the amount of any income received from the subdivided lands, upon

tender of appropriate instruments of reconveyance made at any time before the entry of judgment. If the purchaser no longer owns the lot, parcel, unit, or interest in subdivided lands, that person may recover the amount that would be recoverable upon a tender of a reconveyance less the value of the land when disposed of and less interest at the rate of six percent per year on that amount from the date of disposition.

2. No action may be brought under this section for the recovery of the consideration paid after five years from the date of such disposition nor more than three years after the purchaser has received information as to matter or matters upon which the proposed recovery is based, whichever occurs first.
3. Any stipulation or provision purporting to bind any person acquiring subdivided lands to waive compliance with this chapter or any rule or regulation or order under it is void.
4. The rights and remedies provided by this chapter are in addition to any and all other rights and remedies that may exist at law or in equity.

43-23.1-19. Jurisdiction. Dispositions of subdivided lands are subject to this chapter, and the district courts of this state have jurisdiction in claims for relief arising under this chapter if:

1. The subdivider's principal office is located in this state; or
2. Any offer or disposition of subdivided lands is made in this state, whether or not the offeror or offeree is then present in this state, if the offer originates within this state or is directed by the offeror to a person or place in this state and received by the person or at the place to which it is directed.

43-23.1-20. Extradition. In proceedings for extradition of a person charged with a crime under this chapter, it need not be shown that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding or other state.

43-23.1-21. Service of process.

1. In addition to the methods of service provided for in the North Dakota Rules of Civil Procedure and statutes, service may be made by delivering a copy of the process to the office of the commission, but it is not effective unless:
 - a. The plaintiff, which may be the commission in a proceeding instituted by it, forthwith sends a copy of the process and of the pleading by registered mail to the defendant or respondent at that person's last-known address.
 - b. The plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.
2. If any person, including any nonresident of this state, engages in conduct prohibited by this chapter or any rule or regulation or order hereunder, and has not filed a consent to service of process and personal jurisdiction over that person cannot otherwise be obtained in this state, that conduct authorizes the commission to receive service of process in any noncriminal proceeding against that person or that person's successor which grows out of that conduct and which is brought under this chapter or any rule or regulation or order hereunder, with the same force and validity as if served on that person personally. Notice must be given as provided in subsection 1.

43-23.1-22. Evidentiary matters.

1. In any action, civil or criminal, when a defense is based upon any exemption provided for in this chapter, the burden of proving the existence of such exemption is upon the party raising such defense.
2. In any action, civil or criminal, a certificate signed and sealed by the commission stating compliance or noncompliance with the provisions of this chapter is admissible in any such action.

43-23.1-23. Penalties. Any person who willfully violates any provision of this chapter or who willfully violates any rule or regulation or order of the commission made pursuant to the provisions of this chapter, or who engages in any act, practice, or transaction declared by any provision of this chapter to be unlawful, is guilty of a class C felony.

**CHAPTER 43-23.2
REAL ESTATE EDUCATION FUND**

Section	
43-23.2-01	Real Estate Education, Research, and Recovery Fund—Purposes—Administration
43-23.2-02	Fees Paid into Fund
43-23.2-03	Claims Against Fund—Orders for Payment
43-23.2-04	Hearings
43-23.2-05	Motion for Dismissal—Commission May Defend Action
43-23.2-06	Judgment Debtor May Defend—Default Judgments
43-23.2-07	Order for Payment
43-23.2-08	Limitation of Payment—Pro Rata Distribution
43-23.2-09	Repayment to Fund
43-23.2-10	Claims Satisfied in Order of Filing
43-23.2-11	Deposits by Commission
43-23.2-12	Subrogation Rights of Commission
43-23.2-13	Disciplinary Action by Commission

43-23.2-01. Real estate education, research, and recovery fund—Purposes—Administration. There is hereby created a real estate education, research, and recovery fund, which must be used to provide a fund whereby aggrieved persons may make application for the payment of unsatisfied judgments, and for the furnishing of education and research in the field of real estate for the benefit of licensees, all in accordance with the provisions and limitations contained within this chapter. The fund must be administered by the state real estate commission as provided within this chapter.

43-23.2-02. Fees paid into fund.

1. In addition to the appropriate licensing fees paid by real estate brokers and salespersons, each person licensed for the calendar year 1976 as a real estate broker or salesperson shall pay, at the time of application for such license, a separate fee in the amount of twenty dollars which must be credited into the education, research, and recovery fund. Each person so licensed for the calendar year 1977 shall pay a like fee in the amount of twenty dollars which must be credited into the fund. Thereafter, any person who is licensed as a real estate broker or salesperson for the first time, either for the calendar year 1978 or for a subsequent calendar year, shall pay a fee of twenty dollars at the time of obtaining such license which must be credited into the fund. Except for assessments paid into the fund as provided in subsection 2, any person obtaining a broker's or salesperson's license for the first time which becomes effective for the calendar year 1978 or for a subsequent calendar year, shall pay the fee of twenty dollars into the fund only once.
2. If, on June thirtieth of any year, following the establishment of the real estate education, research, and recovery fund, the amount remaining in the fund is less than sixty thousand dollars, every licensed real estate broker and salesperson, when renewing that individual's license, shall pay, in addition to the annual renewal fee, a sum not to exceed twenty dollars, which must have been determined by the commission to be sufficient to restore

the balance in the fund to at least sixty thousand dollars.

3. The commission shall maintain a minimum of sixty thousand dollars in the fund for recovery purposes. Such funds must be invested and reinvested by the commission and interest from said investments must be deposited to the credit of the fund. Sufficient liquidity must be maintained so that moneys are available to satisfy all claims which are processed through the commission by means of the procedures established in this chapter.
4. The commission, in its discretion, may use any moneys in the fund in excess of sixty thousand dollars, regardless of whether it is from education, research, and recovery fund fees or accrued interest thereon, for the following purposes:
 - a. To promote the advancement of education and research in the field of real estate for the benefit of those licensed under chapter 43-23.
 - b. To underwrite educational seminars and other forms of educational projects for the benefit of real estate licensees.
 - c. To establish a real estate chair or courses at North Dakota institutions of higher learning for the purpose of making such courses available to licensees and the general public.
 - d. To contract for a particular educational or research project in the field of real estate to further the purposes of chapter 43-23.
5. The executive director of the commission shall furnish a bond in the amount of sixty thousand dollars, upon such conditions as the commission may prescribe.

43-23.2-03. Claims against fund—Orders for payment. When any aggrieved person obtains a final judgment in any court of competent jurisdiction against any person licensed under chapter 43-23, on grounds of fraudulent, deceptive, or dishonest practices, or conversion of trust funds arising directly out of any act or transaction when the judgment debtor was licensed and performed acts for which a license is required under chapter 43-23, and which act or transaction occurred on or after July 1, 1975, the aggrieved person may, upon obtaining such final judgment, file an application in the court in which the judgment was entered for an order directing payment out of the fund in the amount of the actual and direct loss up to the sum of fifteen thousand dollars, unpaid on the judgment, provided that nothing contained within this chapter may be construed to obligate the fund for more than fifteen thousand dollars per transaction regardless of the number of persons aggrieved or parcels of real estate involved in the transaction. The application must be verified and must be served on the commission and upon the judgment debtor and an affidavit of service filed with the court.

43-23.2-04. Hearings. The court shall conduct a hearing upon the filing of the application, which may be continued, within the discretion of the court, for such period as the court may deem appropriate. At such hearing the aggrieved person must be required to show that:

1. The person is not the spouse of the debtor, or the personal representative of such spouse.
2. The person has complied with all the requirements of this chapter.
3. The person has obtained a judgment as set out in section 43-23.2-03, stating the amount thereof and the amount owing thereon at the date of the application.
4. The person has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets which may be sold or applied in satisfaction of the judgment.
5. By such search, the person has discovered no personal or real property or other assets liable to be sold or applied, or that the person has discovered certain of them, describing them, owned by the judgment debtor and liable to be so applied, and that the person has taken all necessary action and proceedings for the realization thereof, and that the amount thereby realized was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due on the judgment after application of the amount realized.
6. The person has diligently pursued available remedies against all the judgment debtors and

all other persons liable to the person in the transaction for which recovery is sought from the real estate education, research, and recovery fund.

7. The person is making the application not more than one year after the judgment becomes final.

43-23.2-05. Motion for dismissal—Commission may defend action. Whenever the court proceeds upon an application as set forth in this chapter, it shall order payment out of the real estate education, research, and recovery fund only upon a determination that the aggrieved party has a valid claim for relief within the purview of this chapter and has complied with the provisions of this chapter. The judgment is only prima facie evidence of such claim for relief and for the purposes of this chapter is not conclusive. The commission may defend any such action on behalf of the fund and has recourse to all appropriate means of defense and review including examination of witnesses. The commission may move the court at any time to dismiss the application when it appears there are no triable issues and the petition is without merit. The motion may be supported by affidavit of any person or persons having knowledge of the facts, and may be made on the basis that the petition, and the judgment referred to therein, does not form the basis for a meritorious recovery claim within the purview of this chapter; provided, however, the commission shall give written notice at least ten days before such motion. The commission may, subject to court approval, compromise a claim based upon the application of an aggrieved party. It is not bound by any prior compromise or stipulation of the judgment debtor.

43-23.2-06. Judgment debtor may defend—Default judgments. The judgment debtor may defend any such action on the judgment debtor's own behalf and has recourse to all appropriate means of defense and review, including examination of witnesses. Whenever an applicant's judgment is by default, stipulation, or consent, or whenever the action against the licensee was defended by a trustee in bankruptcy, the applicant has the burden of proving any claim for relief for fraudulent, deceptive, or dishonest practices, or conversion of trust funds. Otherwise, the judgment creates a rebuttable presumption of the fraudulent, deceptive, or dishonest practices, or conversion of trust funds. This presumption is a presumption affecting the burden of producing evidence.

43-23.2-07. Order for payment. If the court finds after the hearing that said claim should be levied against the portion of the fund allocated for the purpose of carrying out the provisions of this chapter, the court shall enter an order directed to the commission requiring payment from the fund of whatever sum it shall find to be payable upon the claim pursuant to the provisions of and in accordance with the limitations contained in this chapter.

43-23.2-08. Limitation of payment—Pro rata distribution. Notwithstanding any other provision of this chapter, the liability of that portion of the fund allocated for the purposes of this chapter may not exceed fifteen thousand dollars for any one licensee. If the fifteen thousand dollar liability of the fund is insufficient to pay in full the valid claims of all aggrieved persons by whom claims have been filed against any one licensee, such fifteen thousand dollars must be distributed among them in the ratio that their respective claims bear to the aggregate of such valid claims or in such other manner as the court deems equitable. Distribution of such moneys must be among the persons entitled to share therein, without regard to the order or priority in which their respective judgments may have been obtained or their claims have been filed. Upon petition of the commission the court may require all claimants and prospective claimants against one licensee to be joined in one action, to the end that the respective rights of all such claimants to the fund may be equitably adjudicated and settled.

43-23.2-09. Repayment to fund. Should the commission pay from the fund any amount in settlement of a claim or toward satisfaction of a judgment against a licensed broker or

salesperson, the license of the broker or salesperson must be automatically suspended upon the effective date of an order by the court as set forth herein authorizing payment from the fund. No such broker or salesperson may be granted reinstatement until having repaid in full, plus interest at the rate of four percent a year, the amount paid from the fund on that person's account. A discharge in bankruptcy does not relieve a person from the penalties and disabilities provided in this chapter.

43-23.2-10. Claims satisfied in order of filing. If, at any time, the money deposited in the fund and allocated for purposes other than real estate education and research is insufficient to satisfy any duly authorized claim or portion thereof, the commission shall, when sufficient money has been deposited in the fund, satisfy such unpaid claims or portions thereof, in the order that such claims or portions thereof were originally filed, plus accumulated interest at the rate of four percent a year.

43-23.2-11. Deposits by commission. Any sums received by the commission pursuant to any provision of this chapter must be deposited in a federally insured depository in this state, and credited to the real estate education, research, and recovery fund, and said sums must be allocated exclusively for the purposes provided in this chapter.

43-23.2-12. Subrogation rights of commission. When, upon the order of the court, the commission has paid from the fund any sum to the judgment creditor, the commission is subrogated to all of the rights of the judgment creditor to the extent of the amount so paid and the judgment creditor shall assign all the judgment creditor's right, title, and interest in the judgment to the extent of the amount so paid to the commission and any amount and interest so recovered by the commission on the judgment must be deposited in the fund.

43-23.2-13. Disciplinary action by commission. Nothing contained in this chapter limits the authority of the commission to take disciplinary action against any licensee under other provisions of chapter 43-23, nor does the repayment in full of all obligations to the fund by any licensee nullify or modify the effect of any other disciplinary proceeding brought pursuant to the provisions of chapter 43-23.

CHAPTER 43-23.4
REAL ESTATE BROKER TRUST ACCOUNTS

Section	
43-23.4-01	Real Estate Trust Account Committee
43-23.4-02	Powers and Duties of the Committee
43-23.4-03	Officers
43-23.4-04	Director
43-23.4-05	Disposition of Funds Upon Dissolution
43-23.4-06	Preserving Identity of Funds and Property of a Client

43-23.4-01. Real estate trust account committee. The president of the North Dakota association of realtors, with the approval of the board of directors of the association, shall appoint a five-member real estate trust account committee. Three members must be realtors in this state who are members of the association and licensed to practice real estate in this state. The remaining two members may not be realtors. The term of office for members is three years, except that, as determined by lot, one realtor member first appointed shall serve for an initial term of one year, and one realtor member and one nonrealtor member first appointed shall serve an initial term of two years. No member may serve more than two successive

three-year terms. Each member shall serve until a successor is appointed. A vacancy on the committee must be filled by appointment of a member to serve for the unexpired portion of the term. Members of the committee serve at the pleasure of the board of directors of the association.

43-23.4-02. Powers and duties of the committee.

1. The real estate trust account committee shall implement and administer an interest on the broker trust account program.
2. The committee is the sole recipient of the interest or dividends paid from real estate interest-bearing trust accounts under the broker trust account program. Upon receipt of the funds, the committee shall make appropriate temporary investments of the funds pending disbursement of the funds.
3. The committee, by grants and appropriations it determines appropriate, shall disburse funds solely for:
 - a. Providing housing and shelter to the homeless and poor.
 - b. Providing public education relating to needs of housing for the poor.
 - c. Improving available safe and decent housing.
4. No funds may be disbursed for any purpose other than tax-exempt public purposes permitted under section 18 of article X of the Constitution of North Dakota, and section 501(c)(3) of the Internal Revenue Code.
5. The real estate trust account committee shall maintain adequate records reflecting all transactions arising with respect to income from and disbursements of the interest on real estate trust accounts.
6. Within one hundred eighty days after July 1, 1991, the committee shall adopt rules establishing guidelines and procedures for the operation of an interest on the real estate trust account program, including:
 - a. Guidelines for identifying eligible applicants.
 - b. Procedures for submitting grant applications.
 - c. Guidelines for awarding grant applications.
 - d. Procedures for accounting for the expenditure of grant funds by the recipient.Upon becoming effective, the guidelines and procedures are the basis for the administration of the disbursement of the funds by the committee.
7. Immediately after July 1, 1991, the real estate trust account committee shall take any action necessary to obtain permission from the federal reserve system, federal home loan bank board, and federal deposit insurance corporation to use negotiable order of withdrawal accounts for the deposit of funds of clients or third persons held by a broker in connection with a representation or transaction.
8. The real estate trust account committee shall adopt rules establishing guidelines and procedures that provide for an exemption from interest-bearing trust accounts requirements when the cost of maintaining an interest-bearing trust account exceeds any potential interest earnings.

43-23.4-03. Officers. The president of the board of directors of the North Dakota association of realtors, with the approval of the board, shall appoint a chairman and vice chairman of the real estate trust account committee. The committee may elect other officers as it deems appropriate and may specify their duties.

43-23.4-04. Director. The real estate trust account committee may appoint an executive director of the real estate trust account committee on a full-time or part-time basis at the pleasure of the board. The executive director is entitled to receive compensation set by the committee. The executive director, before entering upon the duties of the office, may be required to provide a surety bond in an amount determined by the committee. The executive

director is responsible and accountable to the committee for the proper administration of this chapter. The executive director may employ persons or expend money for services approved by the committee.

43-23.4-05. Disposition of funds upon dissolution. Upon dissolution of the organization, assets must be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or to such entities organized and operated exclusively for charitable, educational, religious, or scientific purposes under section 501(c)(3) of the Internal Revenue Code. Any assets not so disposed of must be disposed of by a court of competent jurisdiction of the county in which the principal office of the organization is located exclusively for charitable, educational, religious, or scientific purposes.

43-23.4-06. Preserving identity of funds and property of a client.

1. All funds of clients paid to a real estate broker, including advances for costs and expenses, must be deposited in one or more identifiable interest-bearing trust accounts maintained as required by section 43-23-14.1.
2. Each real estate broker's trust account must be an interest-bearing trust account in a bank, savings bank, trust company, savings and loan association, savings association, credit union, or federally regulated investment company authorized by federal or state law to do business in this state and insured by the federal deposit insurance corporation, the national credit union share insurance fund, or the federal savings and loan insurance corporation, and selected by the broker in the exercise of ordinary prudence unless otherwise agreed upon by the parties to the real estate transaction as provided by rule by the real estate commission. Interest-bearing trust funds must be placed in accounts in which withdrawals or transfers may be made by the depositing broker or realty firm without delay, subject only to any notice period that the depository institution is required to reserve by law or regulation.
3. The broker shall direct the depository institution to:
 - a. Remit interest or dividends, minus any service charges or fees to the brokers or depository institution, on the average monthly balance in the account, or as otherwise computed in accordance with an institution's standard accounting practice, at least quarterly, to the real estate trust account committee;
 - b. Transmit with each remittance to the committee a statement showing the name of the broker or real estate firm for which the remittance is sent, the rate of interest applied, the amount of any service charges deducted, the account balance of the period in which the report is made; and
 - c. Transmit a copy of the statement to the depositing broker.
4. Every licensed real estate broker shall maintain on a current basis, records sufficient to demonstrate compliance with the laws and rules governing the interest-bearing trust account activities.

North Dakota Administrative Rules

**ARTICLE 70-01
GENERAL ADMINISTRATION**

Chapter

70-01-01	Organization of Commission
70-01-02	Rules for Pleading and Practice

**CHAPTER 70-01-01
ORGANIZATION OF COMMISSION**

Section

70-01-01-01	Organization of Real Estate Commission
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70-01-01-01. Organization of real estate commission.

1. **History and functions.** The 1957 legislative assembly passed a real estate licensing law, codified as North Dakota Century Code chapter 43-23. This chapter requires the governor to appoint a state real estate commission. It is the responsibility of the commission to administer the real estate license law regarding brokers and salespersons and to regulate the sale of out-of-state subdivided lands offered for sale to residents of North Dakota. In addition, the commission is required to administer a real estate education, research, and recovery fund whereby aggrieved persons may make application for the payment of unsatisfied judgments.
2. **Commission membership.** The commission consists of five members, three of whom are active real estate brokers, appointed by the governor. Members of the commission are appointed for a term of five years, staggered so the term of one member expires each year. At the expiration of the term of any member of the commission, the governor appoints a successor for a term of five years.
3. **Executive Director.** The executive director of the commission is employed by the commission and is responsible for administration of the commission's activities.
4. **Inquiries.** Inquiries regarding the commission may be addressed to the executive director:

North Dakota Real Estate Commission
P.O. Box 727
Bismarck, North Dakota 58502-0727

History: Amended effective July 1, 2006; April 1, 2008.

General Authority:

NDCC 28-32-02

Law Implemented:

NDCC 43-23-03

**CHAPTER 70-01-02
RULES FOR PLEADING AND PRACTICE**

Section

70-01-02-01	Place of Hearing
70-01-02-02	Public Hearing
70-01-02-03	Rules of Procedure
70-01-02-04	Pleading
70-01-02-05	Conduct of Hearing
70-01-02-06	Prehearing Conference
70-01-02-07	Depositions
70-01-02-08	Hearings
70-01-02-09	Service of Process
70-01-02-10	Rehearings and Appeals

70-01-02-01. Place of hearing. All hearings shall be held at a location designated by the commission in its notice of hearing.

History: Amended effective January 1, 1992; April 1, 1996.

General Authority:

NDCC 43-23-11.1(3)

Law Implemented:

NDCC 43-23-11.1(3)

70-01-02-02. Public hearing. All hearings conducted by the commission, or its duly authorized employees, shall be open to the public, unless otherwise ordered by the presiding officer at the hearing, or specifically provided by statute.

General Authority:

NDCC 43-23-11.1(3)

Law Implemented:

NDCC 44-04-19

70-01-02-03. Rules of procedure. The rules of procedure of the real estate commission shall be those adopted by the commission, together with those procedures outlined in North Dakota Century Code chapter 28-32.

General Authority:

NDCC 43-23-11.1(3)

Law Implemented:

NDCC 28-32, 43-23-11.1(3)

70-01-02-04. Pleading. The form of pleading before the real estate commission shall be the same as that employed in the district courts of North Dakota. The caption of such pleadings should include: "BEFORE THE NORTH DAKOTA REAL ESTATE COMMISSION".

General Authority:

NDCC 43-23-11.1(3)

Law Implemented:

NDCC 43-23-11.1(3)

70-01-02-05. Conduct of hearing. The hearing shall be conducted and presided over by a member of the commission or such subordinate as may be designated to hear the matter by the chairman of the commission.

General Authority:

NDCC 43-23-11.1(3)

Law Implemented:

NDCC 43-23-11.1(3)

70-01-02-06. Prehearing conference. In any matter pending before it, the commission may direct any party, or attorney for any party, to appear before the commission for the purpose of considering simplification of the issues, amendments to the pleadings, obtaining admission of facts or documents which will avoid unnecessary proof, and such other matters as may aid in the disposition of the matter. Such orders may be made, as may be necessary, to show the action taken at such prehearing conference.

General Authority:

NDCC 43-23-11.1(3)

Law Implemented:

NDCC 43-23-11.1(3)

70-01-02-07. Depositions. The commission or any party may in an investigation of hearing cause the deposition of witnesses or parties residing within or without the state to be taken in the manner prescribed by law.

General Authority:

NDCC 43-23-11.1(3)

Law Implemented:

NDCC 43-23-11.1(3)

70-01-02-08. Hearings.

1. Proceedings going to the revocation or suspension of licenses may be initiated by a verified complaint of an individual or an individual's representative. Proceedings requesting the promulgation, amendment, or repeal of any rules of the commission may be initiated on a verified petition by an individual, or an individual's representative.
2. The commission may in its discretion initiate proceedings to revoke or suspend a license whenever an investigation by the commission or its employees discloses probable grounds

therefore. No hearings shall be initiated until a motion duly authorizing the hearing has been recommended by the commission.

History: Amended effective May 1, 1986.

General Authority:

NDCC 28-32-02, 43-23-11.1(3)

Law Implemented:

NDCC 43-23-11.1(3)

70-01-02-09. Service of process. Complaints, notices, orders or other processes of the commission shall be served personally, or by registered or certified mail, as the real estate commission may direct. Time for answering, or time required on other motions, shall be as prescribed by the commission by rule, or in the absence of such rule, as prescribed by the district courts of North Dakota.

History: Amended effective May 1, 1986.

General Authority:

NDCC 28-32-02, 43-23-11.1(3)

Law Implemented:

NDCC 43-23-11.1(2)(3)

70-01-02-10. Rehearings and appeals. The procedure for rehearing and appeals shall be that prescribed in North Dakota Century Code chapter 28-32.

General Authority:

NDCC 43-23-11.1(3)

Law Implemented:

NDCC 28-32-14, 28-32-15

ARTICLE 70-02 REAL ESTATE LICENSURE

Chapter

70-02-01	Licensing, Trust Accounts, and Complaints
70-02-02	Education and Experience Standards
70-02-03	Licensee Responsibilities
70-02-04	Continuing Education
70-02-05	Errors and Omissions Insurance

CHAPTER 70-02-01

LICENSING, TRUST ACCOUNTS, AND COMPLAINTS

Section

70-02-01-01	Application and Purpose of Title
70-02-01-02	Application for License
70-02-01-03	Examinations
70-02-01-04	Renewal of License
70-02-01-05	Inactive Licenses
70-02-01-06	Nonresident Brokers and Salespersons
70-02-01-07	Licensee's Duties Upon Surrender, Suspension, or Revocation of License
70-02-01-08	Salesperson Transfer or Release
70-02-01-09	Broker Associates
70-02-01-10	Salesperson
70-02-01-11	Branch Office
70-02-01-12	Sharing Office Space
70-02-01-13	Prevention of Same or Deceptively Similar Real Estate Firm Names
70-02-01-14	Salesperson Closing
70-02-01-15	Trust Account Requirements—Handling of Funds—Records
70-02-01-16	Complaints—Answer—Dismissal—Hearing

70-02-01-17	Disputes Between Licensees
70-02-01-18	Commissions
70-02-01-19	Definitions—Psychologically Impacted Properties
70-02-01-20	Disclosure of Psychologically Impacted Properties—Not a Material Defect
70-02-01-21	Responsibilities of Designated Broker

70-02-01-01. Application and purpose of title.

1. This title applies in all proceedings and hearings had before the commission in matters within its jurisdiction, except in cases where the statute involved provides a procedure inconsistent with this title, and in such case the statute shall govern to the extent of such inconsistency.
2. It is the purpose of this commission, acting under the provisions of the law creating it, to safeguard the public interest in real estate transactions, to regulate the licensing of real estate brokers and salespersons, to encourage and require the maintenance of high standards in ethical practices by all real estate licensees doing business in North Dakota, and to seek out and prosecute those persons who unlawfully engage in dishonest, fraudulent, or criminal activities in connection therewith.

History: Amended effective January 1, 1992.

General Authority:

NDCC 43-23-11.1(3)

Law Implemented:

NDCC 43-23-02

70-02-01-02. Application for license.

1. No application for either a broker's or salesperson's license will be accepted from a person under the age of eighteen years.
2. All applications must be filed with the commission before an examination, complete in every detail with every question answered and correct fees sent with the application.
3. It shall be incumbent upon the applicant for a real estate broker's license to submit the applicant's proofs of qualification pursuant to subsection 3 of North Dakota Century Code section 43-23-08. Broker applicants wishing to qualify under the two-year experience requirement shall be required to submit to the commission a letter from said applicant's broker or brokers that the applicant has been actively engaged in the real estate business as a salesperson for at least two years.
 "Actively engaged" means that the applicant must have devoted the applicant's full time as a licensed real estate salesperson. The foregoing shall be certified by a licensed real estate broker.
4. Each application for license shall be made on application forms provided by the real estate commission and are to be filled in personally by, or under the supervision of, the applicant.
5. After an application is filed, no refund of application fee will be made to any applicant.
6. The commission may deny any application for license when one or more of the following conditions are present:
 - a. The application contains any false statement.
 - b. An investigation fails to show affirmatively that the applicant possesses in every instance the necessary qualifications.
 - c. The applicant has acted or attempted to act in violation of North Dakota Century Code chapter 43-23 or this title.
 - d. The applicant has had a license suspended or revoked in another state.
 - e. The check used in paying an examination or license fee shall not, for any reason, be honored by the financial institution upon which it is written.
 - f. The applicant has issued one or more checks or drafts which have been dishonored by a payor bank because:
 - (1) No account exists;

- (2) The account was closed; or
- (3) The account did not contain sufficient funds to pay the check or draft in full upon its presentment.
- g. The applicant's credit history shows the existence of unpaid and overdue judgments, liens, or other debt obligations which, for the protection of the public, requires that the application be denied.
- 7. If the application and supporting documents on their face show that the applicant is qualified, but from complaints and information received or from investigation it shall appear to the commission at any time before the initial license is delivered, that there may be cause to deny a license, the commission may order a hearing to be held to consider such complaints or information.
- 8. The commission may require such other proof as may be deemed advisable of the honesty, truthfulness, and good reputation of any applicant, including the officers and directors of any corporation, or the members of any copartnership or association making such application, before accepting an application for license.
- 9. Inquiry and investigation may be made by the commission as to the financial responsibility of each applicant.
- 10. When a corporation submits its application for a license, the application must be accompanied by a copy of the articles of incorporation and a certificate of authority issued by the secretary of state.
- 11. When a partnership submits its application for a license, the application must be accompanied by a copy of the partnership agreement.
- 12. An applicant for licensure in another state may request the commission to certify to such other state that the applicant is a licensee of this state. A fee as set by the commission shall accompany the request.
- 13. An application for an organization to be licensed as a salesperson or broker associate pursuant to North Dakota Century Code section 43-23-05.1 must be accompanied by a one-time license fee of not more than two hundred dollars, as set by the commission. The individual who owns the organization must possess and maintain a valid and active real estate license in order for the organization to be licensed. The failure to do so will cause the organization's license to become inactive and invalid. The one-time fee must be paid each time the organization's license is activated.

History: Amended effective August 1, 1981; May 1, 1986; January 1, 1992; February 1, 2004; January 1, 2006; April 1, 2008.

General Authority:

Law Implemented:

NDCC 28-32-02, 43-23-08(6)

NDCC 43-23-05.1, 43-23-08, 43-23-09, 43-23-11.1

70-02-01-03. Examinations.

- 1. An applicant will not be permitted to take the written examination until and unless the applicant has been authorized in writing to appear for the examination.
- 2. If an applicant should fail to appear for examination within four months after notification by the commission that the applicant is qualified to take the examination, an applicant must reapply for examination as in the first instance and pay the required fee.
- 3. During the examination the use or possession of any unfair methods or notes, the giving or receiving of aid of any kind, or the failure to obey instructions will result in a denial of the application and license.
- 4. If the salesperson applicant passes one portion of the examination, national or state, the salesperson applicant shall not be required to repeat that portion of the examination if that applicant passes the remaining portion within twelve months from the date of the first examination. An applicant must submit a new application in complete detail together with the statutory fees if the examination has not been passed within the same twelve-month period.

5. A broker applicant must pass the broker examination within twelve months from the date of the first examination. An applicant must submit a new application in complete detail together with the statutory fees if the examination has not been passed within the same twelve-month period.

History: Amended effective January 1, 1992; February 1, 2004; April 1, 2008.

General Authority:

NDCC 28-32-02, 43-23-11.1(3)

Law Implemented:

NDCC 43-23-13(4)

70-02-01-04. Renewal of license. All licenses expire on December thirty-first of each year. Persons desiring to continue in business must make proper application for renewal on or before January first **November fifteenth of each year in order for the respective license to be renewed on a timely basis for the following license period.** Failing to do this subjects such persons to loss of the right to charge a commission and also prosecution for doing business without a license **after December thirty-first.** Any person whose license has been canceled for failure to renew the person's license when due must comply with all the requirements of a new applicant to regain a license.

History: Amended effective October 1, 2015.

General Authority:

NDCC 43-23-11.1(3)

Law Implemented:

NDCC 43-23-13(4)

70-02-01-05. Inactive licenses.

1. A qualified licensed salesperson desiring to place the salesperson's license on an inactive status may do so by having the broker with whom the salesperson is associated surrender the salesperson's license to the commission, with a written request from the salesperson that the salesperson's license be placed on an inactive status. The salesperson may keep the salesperson's license on an inactive status for an indefinite period from the date the license is surrendered. The salesperson placing the salesperson's license on inactive status shall pay the required fee for such salesperson's license each year. A salesperson whose license is in an inactive status shall not engage in any manner in any of the activities described under North Dakota Century Code chapters 43-23 and 43-23.1, until the salesperson shall first request that the salesperson's license be reactivated by the commission. During the time that a salesperson's license is on an inactive status educational requirements do not need to be met. However, if any applicable education requirements are unsatisfied, proof of fulfillment must be submitted before the license can be reissued on an active status.
2. A qualified licensed broker who withdraws from the real estate business entirely and who desires to place the broker's license on an inactive status may do so by surrendering the broker's license to the commission, with a written request that the license be placed on an inactive status. The broker may keep the broker's license on an inactive status for an indefinite period from the date of expiration of the license surrendered. The broker placing the broker's license on inactive status shall pay the required fee for such broker's license each year. During the time that a broker's license is on an inactive status educational requirements do not need to be met. However, if any applicable education requirements are unsatisfied, proof of fulfillment must be submitted before the license can be reissued on an active status.
3. While a license is on inactive status it is not necessary, in the case of a broker, to maintain an active trust account.
4. To reactivate an inactive license, a licensee must meet the continuing education hours as required by section 70-02-04-02 for each continuing education period the licensee's license was inactive, not to exceed the number of hours required for the three continuing education periods prior to reactivation. The requirements of section 70-02-04-02 must have been fulfilled within the three years immediately preceding the return to active status.

History: Amended effective May 1, 1986; January 1, 1992; February 1, 2004; July 1, 2010.

General Authority:

NDCC 28-32-02, 43-23-08(6)

Law Implemented:

NDCC 43-23-08, 43-23-08.2

70-02-01-06. Nonresident brokers and salespersons.

1. Any person who becomes an applicant for a nonresident license shall become subject to the same rules required of an applicant whose residence is in North Dakota. **A designated broker shall obtain a nonresident license before an associate broker or salesperson licensed under the designated broker can be issued a nonresident license.**
2. An applicant for nonresident broker's or salesperson's license shall hold a currently valid broker's or salesperson's license in the state of the applicant's domicile and that state shall certify that the applicant is in good standing and no complaints are pending.
3. A nonresident broker must maintain an active place of business as a real estate broker in the state of the broker's residence. The nonresident broker shall furnish proof of maintaining an active place of business by submitting information deemed necessary by the commission. **A North Dakota firm license shall be obtained if the company is a partnership, corporation, limited liability company, or association.**
4. North Dakota will not recognize the licensee from another state **for a reciprocal license** unless an agreement granting reciprocal privileges to North Dakota licensees has been made by the commission with the proper regulatory authorities of that state. The agreement shall set out the terms and the regulations to be followed.
5. An applicant currently licensed in a nonreciprocal state who has successfully passed the real estate licensing examination given in another state need only take the state portion of the examination in North Dakota.

History: Amended effective May 1, 1986; January 1, 1992; April 1, 2008; **October 1, 2015.**

General Authority:

Law Implemented:

NDCC 28-32-02, 43-23-08(6)

NDCC 43-23-10

70-02-01-07. Licensee's duties upon surrender, suspension, or revocation of license.

A broker or salesperson, upon surrendering the broker's or salesperson's license or upon notice of suspension or revocation of the broker's or salesperson's license, shall forward the same at once to the commission. If the license is that of a broker, the broker shall also forward to the commission with the broker's license all salesperson's licenses in the broker's possession or in the broker's office and shall be responsible for all missing licenses of the broker's salesperson. No refund will be made upon any license when surrendered, suspended, or revoked.

History: Amended effective January 1, 1992; February 1, 2004.

General Authority:

Law Implemented:

NDCC 43-23-11.1(3)

NDCC 43-23-11.1

70-02-01-08. Salesperson transfer or release. The real estate broker shall retain in the broker's possession the license of all real estate salespersons licensed under the broker and shall relinquish possession of the licenses only to the real estate commission. When for any reason a salesperson severs connection with the salesperson's broker and desires to transfer to another broker, the salesperson must secure a transfer and release form provided by the commission, to be executed by the salesperson, the salesperson's former broker, and the salesperson's new employing broker. Should the salesperson's former broker not be agreeable to the transfer or release, the broker then shall have the right to state the broker's reasons for refusal. Unless there is sufficient justification, the license will be transferred pending the receipt of the transfer form and fee.

History: Amended effective May 1, 1986; January 1, 1992.

General Authority: NDCC 28-32-02, 43-23-08(7), 43-23-11.1(3)

Law Implemented: NDCC 43-23-12(2), 43-23-13(6), 43-23-13(7)

70-02-01-09. Broker associates. A real estate broker regularly licensed who does not conduct an office under the broker's own name, but is employed by another licensed broker

or affiliated with another licensed broker on a fee division basis and performs service similar to that of a salesperson, must not at any time act independently as a broker, and shall not perform any real estate service without full consent and knowledge of the broker's employing or supervising broker. The employing or supervising broker shall at all times be responsible for the action of the employed or affiliated broker to the same extent as though the employed or affiliated broker were an employed salesperson.

History: Amended effective January 1, 1992.

General Authority:

NDCC 43-23-11.1(3)

Law Implemented:

NDCC 43-23-06.1(5)

70-02-01-10. Salesperson. A salesperson shall not commence work until the salesperson's employing broker receives the appropriate license. Any salesperson leaving the employment of a broker shall not take nor use any agreements (listing/buyer broker agreements, management contracts, etc.) secured through the office or through salespersons of the former employing broker unless specifically authorized by the broker. All materials and records that belong to the former broker shall be returned to the former broker.

History: Amended effective January 1, 1992; February 1, 2004.

General Authority:

NDCC 43-23-11.1(3)

Law Implemented:

NDCC 43-23-12(2)

70-02-01-11. Branch office.

1. Definition. If a broker maintains more than one office, then one office shall be designated as the main office and each additional office shall constitute a branch office. If a real estate broker maintains a regular office, the broker's home shall not be considered a branch office.
2. Applications. The broker desiring to open a branch office shall file with the commission an application for a branch office license on forms provided by the commission.
3. Supervision. The applicant broker must designate the applicant broker or another licensee to act as branch office manager to aid the broker in actively managing each branch office and to aid the broker in supervising the licensees working from such branch office. The designated licensee shall be responsible for all activities of that branch office. The applicant broker may designate the applicant broker to act as manager for all branch offices.
4. Notification to commission of change. It shall be the responsibility of the applicant broker to notify the commission in writing of any change of address of a branch office or change of supervisor of the branch office, within ten days after the change.
5. Notification to commission. The applicant broker shall at all times notify the commission of the location and address of each branch office which the broker operates and the name of the licensee who supervises the branch office.
6. Additional office. Every additional office or place of business, other than the principal place of business of a broker, shall be licensed only with the approval of the commission and only after the applicant broker has given satisfactory proof that this additional office shall be under the supervision of a duly authorized licensee.
7. Display license. A branch license shall be displayed in the branch office, shall bear the address of the branch office, and shall bear the name of the licensee designated to actively manage the branch office.
8. Identical name. The branch office must be operated under the same name as the principal office.

History: Amended effective December 1, 1999.

General Authority:

NDCC 43-23-11.1(3)

Law Implemented:

NDCC 43-23-13(5)

70-02-01-12. Sharing office space. It shall be acceptable for more than one broker to operate in an office at the same address if each broker maintains all records and trust

accounts separate from all other brokers. Each broker shall operate under a business name which clearly identifies the broker as an individual broker within the group of brokers.

General Authority:

NDCC 43-23-11.1(3)

Law Implemented:

NDCC 43-23-12(1), 43-23-14.1

70-02-01-13. Prevention of same or deceptively similar real estate firm names. The commission within its discretion may prevent a real estate firm from using the same name or a name deceptively similar to that of a real estate firm already in the community if the commission determines that the interests of the public are thereby endangered.

General Authority:

NDCC 43-23-11.1(3)

Law Implemented:

NDCC 43-23-12(1)

70-02-01-14. Salesperson closing. A salesperson shall not handle the closing of any real estate transaction (unless authorized by the salesperson's employer broker), except under the direct supervision of the broker, a licensed officer, or a licensed partner of the corporation or partnership under whom the salesperson is licensed.

History: Amended effective January 1, 1992.

General Authority:

NDCC 43-23-11.1(3)

Law Implemented:

NDCC 43-23-11.1(1)

70-02-01-15. Trust account requirements—Handling of funds—Records.

1. All moneys belonging to others and accepted by the broker while acting in the capacity as a broker shall be deposited in an authorized financial institution in this state in an account separate from money belonging to the broker. Clients' funds shall be retained in the depository until the transaction involved is consummated or terminated, at which time the broker shall account for the full amounts received.
 - a. Definitions. The term "authorized financial institution" means a bank, savings bank, trust company, savings and loan association, savings association, credit union, or federally regulated investment company authorized by federal or state law to do business in this state and insured by the federal deposit insurance corporation, the national credit union share insurance fund, or the federal savings and loan insurance corporation.
 - b. Name of account. The name of such separate account shall be identified by the words "trust account" or "escrow account".
 - c. Notification. Each broker shall notify the commission of the name of the institution in which the trust account or accounts are maintained and also the name of the accounts on forms provided therefore. A trust account card shall be filed with the commission by each new applicant for a real estate broker's license. A new form shall be filed with the commission each time a broker changes the real estate trust account in any manner whatsoever including, but not limited to, change of depository, change of account number, change of business name, or change of method of doing business. The form shall be filed with the commission within ten days after the aforementioned change takes place.
 - d. Authorization. Each broker shall authorize the commission to examine and audit the trust account and shall complete an authorization form attesting to the trust account and consenting to the examination and audit of the account by a duly authorized representative of the commission.
 - e. Commingling prohibited. Each broker shall only deposit trust funds received on real estate transactions in the broker's 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 service charges relating to the trust account.
 - f. Number of accounts. A broker may maintain more than one trust account provided the

Time of deposit. Each broker shall deposit all real estate trust money received by the broker or the broker's salesperson in the trust account within twenty-four hours of receipt of the money by the broker or the salesperson unless otherwise provided in the purchase contract. In the event the trust money is received on a day prior to a holiday or other day the depository is closed, the money shall then be deposited on the next business day of the depository.

i. **Interest-bearing accounts.** All trust accounts must be interest-bearing and the interest earned must be disbursed only as provided by law, unless all persons having an interest in the funds have otherwise agreed in writing and a copy of the agreement is maintained by the broker for inspection by the commission.

a. Personal payments. No payments of personal indebtedness of the broker shall be made from the separate account other than a withdrawal of earned commissions payable to the broker or withdrawals made on behalf of the beneficiaries of the separate account.

c. **Earnest money.** A broker shall not be entitled to any part of the earnest money or other moneys paid to the broker in connection with any real estate transaction as part or all of the broker's commission or fee until the transaction has been consummated or terminated. The earnest money contract shall include a separate written provision, approved by all parties including the broker, for any division of moneys taken in earnest, when the transaction is not consummated and such moneys are retained as forfeiture payment.

3. A broker shall maintain in the broker's office a complete record of all moneys received or escrowed on real estate transactions, in the following manner:

b. **Bank statements.** Monthly bank statements are to be retained and kept on file.

d. **Journal.** A permanently bound record book called a journal which shows the chronological sequence in which funds are received and disbursed:

(2) For disbursements, the journal must include the date, the payee, and the amount.

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- (4) A running balance must be shown after each entry (receipt or disbursement).
- e. Ledger. This record book will show the receipt and the disbursements as they affect a single, particular transaction as between buyer and seller, etc. The ledger must include the names of both parties to a transaction, the dates, and the amounts received. When disbursing funds, the date, payee, and amount must be shown.
 - f. Reconciliation. The trust account must be reconciled monthly except in the case where there had been no activity during that month.
 - g. Maintain records. Every broker shall keep permanent records of all funds and property of others received by the broker for not less than six years from the date of receipt of any such funds or property.

History: Amended effective August 1, 1981; January 1, 1992; April 1, 1992; December 1, 1999; July 1, 2010; October 1, 2015.

General Authority:

NDCC 43-23-14.1, 43-23.4-06(2)

Law Implemented:

NDCC 43-23-11.1(1)

70-02-01-16. Complaints—Answer—Dismissal—Hearing.

1. All complaints to be investigated by the real estate commission, as required by North Dakota Century Code section 43-23-11.1, must be in writing and filed in triplicate on forms furnished by the commission. The complaint shall be verified and shall include: the full name and address of the person making the complaint, hereinafter referred to as the complainant; the full name and address of the person against whom the complaint is made, hereinafter referred to as the respondent; an allegation that respondent is either a licensed broker or salesperson, and if the respondent is a salesperson, then the full name and address of the broker employer; and a clear and concise statement of the facts constituting the alleged complaint including the time and place of occurrence of particular acts and the names of persons involved.
2. The licensee against whom a complaint, or complaints, has been filed must, within twenty days from receipt of copy or copies of complaints, file the licensee's answer in triplicate on forms furnished by the commission. This answer must be in written affidavit form in triplicate, properly certified, and contain a factual response to the allegations set out in the complaint.
3. If the investigation reveals that the complaint does not involve a violation of the laws, rules, or code of ethics regulating licensees, the complaint shall be dismissed without a formal hearing, and the complainant so informed in writing.
4. If the investigation reveals that the acts of the respondent may be such as to justify disciplinary action against the respondent, a formal hearing will be held on the complaint. Notice of such hearing shall be given at least twenty days in advance by serving upon the respondent a copy of the complaint against the respondent and the date and place of hearing.

History: Amended effective May 1, 1986; January 1, 1992.

General Authority:

NDCC 28-32-02, 43-23-11.1(3)

NDCC 43-23-11.1

Law Implemented:

70-02-01-17. Disputes between licensees. The real estate commission is not authorized by law nor will it consider or conduct hearings involving disputes over fees or commissions between cooperating brokers or brokers and salespersons.

History: Amended effective January 1, 1992.

General Authority:

NDCC 43-23-11.1(3)

Law Implemented:

NDCC 43-23-11.1(1)

70-02-01-18. Commissions. The real estate commission neither recommends nor

recognizes any agreement to fix or impose uniform rates of commission on any real estate transaction.

General Authority:
NDCC 43-23-11.1(3)

Law Implemented:
NDCC 43-23-11.1(1)

70-02-01-19. Definitions—Psychologically impacted properties. As used in this section, the term “psychologically impacted properties” means any real property within this state that is known to be, or is suspected to have been, the site of a suicide, homicide, or other felony, or there are other circumstances, suspicions, or facts which may cause emotional or psychological disturbance or concerns to a prospective purchaser or lessee that have the potential of influencing whether that individual will purchase or lease the property. “Psychologically impacted property” does not mean the fact or suspicion that any present or past occupant is, or has been, infected with or died from human immunodeficiency virus or acquired immune deficiency syndrome or any other disease which has been determined by medical evidence to be highly unlikely to be transmitted through the occupancy of real property.

History: Effective April 1, 1992.

General Authority:
NDCC 28-32-02

Law Implemented:
NDCC 43-23-11.1(1)

70-02-01-20. Disclosure of psychologically impacted properties—Not a material defect. The fact that a parcel of real property, or any building or structure thereon, may be psychologically impacted, or may be in close proximity to a psychologically impacted property, is not a material or substantial fact that is required to be disclosed in a sale, lease, exchange, or other transfer of real estate. Licensees are not required to inform a prospective purchaser that certain real property is psychologically impacted real property. However, if the prospective purchaser asks whether the real property may be psychologically impacted, the licensee is required to inquire of the owner whether there are any facts or suspicions that the property is in fact psychologically impacted, and to advise the prospective purchaser of the owner's response. If the owner refuses to answer the inquiry, the prospective purchaser must be so advised.

History: Effective April 1, 1992.

General Authority:
NDCC 28-32-02

Law Implemented:
NDCC 43-23-11.1(1)

70-02-01-21. Responsibilities of designated broker. The designated broker must have a written company policy that identifies and describes the types of real estate agency relationships in which the agency may engage. In addition, any agency that offers representation to both buyers and sellers must also address in the policy manual the agency's procedures intended to prevent any mishandling of information through both formal and informal sharing of information within the agency, the arrangement of agency office space, and the personal relationships of agents who are representing clients with adverse interests.

History: Effective July 1, 2010.

General Authority:
NDCC 28-32-02

Law Implemented:
NDCC 43-23-12.1

CHAPTER 70-02-02
EDUCATION AND EXPERIENCE STANDARDS

Section	
70-02-02-01	Purpose of Chapter
70-02-02-02	Application for Approval of Classroom Instruction, Distance Education, or Correspondence Course

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70-02-02-17	Correspondence Courses
70-02-02-18	Distance Education Courses Must Be Approved

70-02-02-01. Purpose of chapter. The purpose of this chapter is to delineate the rules which the real estate commission will follow in approving and regulating all schools which wish to offer a course which will comply with the requirements as outlined under North Dakota Century Code section 43-23-08. The commission intends that the courses be educational in nature and that they not be specifically oriented to the passing of the state licensing examination. No course will be approved if the name of the course or any advertising of the school or person offering the course indicates that the primary objective of the course is to prepare students for passing the state licensing examination.

General Authority:
NDCC 43-23-08

Law Implemented:
NDCC 43-23-08

70-02-02-02. Application for approval of classroom instruction, distance education, or correspondence course. In order for any course to be approved by the real estate commission an application for approval shall be filed with the commission not less than forty-five days prior to the contemplated date of opening. The application, in addition to the name and address of the school or person offering the course as well as any other identifying criteria which the commission may require, must be accompanied by a nonrefundable fee of fifty dollars, and must set forth the following:

1. A proposed course outline, in reasonable detail, with hours spent on each subject area to be covered by the course. Each outline shall make reference to the textbook used and other material related to the course or subject matter, and shall substantially conform to the approved curricula outlines prepared by the commission.
2. A resume on all instructors and subject to be taught must accompany the application.
3. A schedule of course offerings for the year for which approval is sought must accompany the application. Each schedule must include the name, date, time, and place of any course offering. The schedule of offerings must be arranged so as to allow reasonable time for either home study or in-class preparation for each classroom session.
4. A fee schedule for all course offerings must accompany the application.

History: Amended effective January 1, 1992; January 1, 2006.

General Authority:
NDCC 43-23-08

Law Implemented:
NDCC 43-23-08

70-02-02-03. Qualifications for classroom instructors. Any person applying for commission approval of classroom instruction must furnish to the commission evidence

satisfactory to the commission that every instructor giving classroom instruction has the necessary specialized preparation, training, and experience to ensure competent instruction.

Instructors who, in the estimation of the school administration, are deemed inadequate or do not satisfy the school's standards of quality should have their services terminated by the school.

General Authority:
NDCC 43-23-08

Law Implemented:
NDCC 43-23-08

70-02-02-04. Courses of study approved by the commission. Courses of study provided in North Dakota Century Code section 43-23-08 shall be courses of study approved by the real estate commission and which are offered by any of the following:

1. North Dakota accredited baccalaureate degree granting institutions and North Dakota or non-North Dakota institutions offering programs, and credits from which can be transferred to an accredited North Dakota baccalaureate degree granting institution.
2. Special institutes or courses relating to real estate which are approved by the commission.
3. A correspondence course approved by the commission.
4. A distance education course approved by the commission.

History: Amended effective January 1, 2006.

General Authority:
NDCC 43-23-08

Law Implemented:
NDCC 43-23-08

70-02-02-05. Commission review of all real estate courses. Periodically, but not less frequently than every two years, the commission shall survey and evaluate the total real estate education program of each school approved by the commission, a written report of which will be provided to the school. The review will be considered by the commission in determining whether the school meets the requirements of law and the commission for continued approval of the school.

General Authority:
NDCC 43-23-08

Law Implemented:
NDCC 43-23-08

70-02-02-06. Approval of classroom instruction. If based upon the application submitted, together with the commission's survey of the total real estate educational program to be provided by the school, the commission determines that the requirements of law and the commission rules have been met, the application shall be approved. Prior to the contemplated date of opening, the applicant shall be notified in writing of the commission's decision to grant or deny approval.

General Authority:
NDCC 43-23-08

Law Implemented:
NDCC 43-23-08

70-02-02-07. Review of courses not having received prior approval. Any person completing a thirty-hour, sixty-hour, or ninety-hour course of study, either classroom, distance education, or correspondence, which has not received prior commission approval, shall submit a complete listing of the courses taken, the number of hours of study for each course and the qualifications of the teachers, and answer any additional questions which the commission may have regarding the course of study. After review of the information, the commission may approve the course of instruction, distance education, or the correspondence courses and give the applicant credit for meeting the educational requirements imposed by North Dakota Century Code chapter 43-23.

History: Amended effective January 1, 2006.

General Authority:
NDCC 43-23-08

Law Implemented:
NDCC 43-23-08

70-02-02-08. Withdrawal of approval. If the commission at any time determines that a person approved to offer a course in real estate is not meeting the requirements of law for continued approval, the commission shall immediately notify the school in writing detailing the deficiencies requiring correction. The schools' approval by the commission shall continue ninety days from the date of the commission's written notice to the school, and if, at the expiration of that period, the school has failed to correct to the commission's satisfaction the deficiencies noted, the commission may withdraw approval of the school.

General Authority:
NDCC 43-23-08

Law Implemented:
NDCC 43-23-08

70-02-02-09. Advertising of approved courses. If the name of the commission is used or if commission approval is indicated, any advertisement may not make or imply any guarantee concerning the applicant's passing of the state real estate licensing examination. Advertising, as it is used in this section, includes any type of solicitation, and the advertisement may not be drawn, printed, or illustrated in any fashion which would indicate that the North Dakota real estate commission has any interest in the school other than ensuring that it complies with the standards imposed by North Dakota Century Code chapter 43-23. In no event can the phrase "North Dakota real estate commission" appear anywhere in the advertisement in larger type than the words and phrases preceding or following the phrase "North Dakota real estate commission". Printed bulletins or other promotional information must be specific with respect to the purpose of each course of instruction, the curricula, the classroom (or other unit), content of the course, tuition, and criteria for successful completion of the course. No promotional material of any school approved by the commission shall state or imply that its program of instruction is the sole vehicle for which the education requisites for licensure shall be attained. Schools or their representatives shall not promote their school in such a manner as to state or imply that their program excels any other course of instruction.

General Authority:
NDCC 43-23-08

Law Implemented:
NDCC 43-23-08

70-02-02-10. Classroom hour. A classroom hour in a course shall be defined as fifty minutes of lecture in classroom attendance or the equivalent materials through correspondence in a school approved by the department of public instruction. **No more than eight hours of instruction can be taken in one day.**

History: Amended effective October 1, 2015.

General Authority:
NDCC 43-23-08

Law Implemented:
NDCC 43-23-08

70-02-02-11. Coordinators. Coordinators or the principal instructor of commission approved program shall be responsible for the conduct and administration of each course presentation, and shall be held responsible for punctuality of classroom session, student attendance records, instructor performance and attendance, examination administration, and student certification.

General Authority:
NDCC 43-23-08

Law Implemented:
NDCC 43-23-08

70-02-02-12. Examinations. Each course of instruction shall utilize written examinations as a component of measurement for determination of successful completion of a course of study. The weight of written examination as the determination of successful completion of a course and the criteria for passing of examinations may be developed by each school based on each school's educational concepts. However, the commission may direct alterations in examination

procedures, criteria for passing, and the administration whenever deemed necessary. Each school shall furnish the commission with copies of its examinations.

General Authority:
NDCC 43-23-08

Law Implemented:
NDCC 43-23-08

70-02-02-13. Certificate of approval. Each school shall issue to the students successfully completing a course of instruction an official certificate which reflects the school's name, course title, course number, and number of classroom hours (or other recognized educational unit) involved in the course. Such certificate, or copies thereof, shall serve as evidence when presented to the commission of successful completion of the course of instruction. Letters of other official communication may also be provided the student, which may be utilized by the student for submission to the commission as evidence of satisfactory completion of the course. The letters will fully reflect the school name, the course title and number, educational units, and be dated and signed by an official of the school.

General Authority:
NDCC 43-23-08

Law Implemented:
NDCC 43-23-08

70-02-02-14. Facilities. Each course of study shall have such classrooms and such other facilities and supportive personnel as is necessary to adequately implement the program.

General Authority:
NDCC 43-23-08

Law Implemented:
NDCC 43-23-08

70-02-02-15. Course content must not be duplicated. The commission shall not accept for the educational requisites for broker or salesperson applications which have more than one course with the same course title and level or same course content and level.

General Authority:
NDCC 43-23-08

Law Implemented:
NDCC 43-23-08

70-02-02-16. No credit given for salesmanship courses. No courses of instruction shall operate under commission approval which will offer a course of instruction based on salesmanship, sales techniques, nor shall a sales training course offered by a real estate firm be considered eligible for consideration of commission approval.

General Authority:
NDCC 43-23-08

Law Implemented:
NDCC 43-23-08

70-02-02-17. Correspondence courses. Applicants for brokers' or salespersons' licenses who have completed the required course hours through a correspondence school must have also successfully passed a midterm and final examination. This examination shall be prepared by the applicant's correspondence school and be taken before a proctor appointed by a school approved by the commission.

General Authority:
NDCC 43-23-08

Law Implemented:
NDCC 43-23-08

70-02-02-18. Distance education courses must be approved. Courses of study offered in a distance education format must be approved by the real estate commission and certified by the association of real estate license law officials. A student must complete the distance education course within one year of the date of enrollment.

History: Effective December 1, 1999.

General Authority:
NDCC 43-23-08.1

Law Implemented:
NDCC 43-23-08

CHAPTER 70-02-03 LICENSEE RESPONSIBILITIES

Section

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70-02-03-17	Designated Broker—Appointed Agent

70-02-03-01. Application of licensee responsibilities. The commission shall have the power to investigate and to suspend or revoke a broker's or salesperson's license upon violation by a licensee of any provisions of the licensee responsibilities.

History: Amended effective January 1, 1992; April 1, 2008.

General Authority:

NDCC 28-32-02

Law Implemented:

NDCC 43-23-11.1(1)

70-02-03-02. Advertising. Repealed effective January 1, 1992.

70-02-03-02.1. Advertising.

1. **Definition:** As used in this section, the terms "advertise", "advertising", and "advertisement" include all forms of representation, promotion, and solicitation disseminated in any manner and by any means of communication for any purpose related to real estate brokerage activity, including, at a minimum, advertising the sale or purchase of real estate or promotion of real estate brokerage services conducted by mail, telephone, the internet, the world wide web, electronic mail, electronic bulletin board, or other similar electronic common carrier systems, business cards, signs, television, radio, magazines, newspapers, and telephonic greetings or answering machine messages.
2. **Trade Name.** Advertising must be done in the real estate brokerage agency's trade name as licensed with the commission and the trade name must be prominently displayed.
3. **Contact Information.** Advertising must include information on how the public can contact the real estate brokerage agency.
4. **Advertising by Licensees.** Advertising by licensees must be under the supervision of the

designated broker. Such advertising may include a licensee's name and telephone number or other contact information, provided the real estate brokerage agency's registered business name or trade name and contact information are also clearly included as required in this section.

5. Deception and Misrepresentation Prohibited. Advertising and promotion must be free from deception and shall not misrepresent the terms of the sale or purchase, real estate brokerage agency policies, or real estate brokerage services.
6. A real estate broker may advertise, in the licensee's own name, property which is owned by the licensee, provided that immediately following the licensee's name where it appears in the advertisement, the words "Owner/Licensed Broker" must also appear. The provisions of this subsection apply both to active broker licensees and licensees whose license is on an inactive status.
7. A real estate salesperson may advertise in that person's own name property which is owned by the salesperson, provided that immediately following the name where it appears in the advertisement, the words "Owner/Licensed Salesperson" must also appear. The provisions of this subsection apply both to active salesperson licensees and licensees whose license is on an inactive status.

History: Effective January 1, 1992; amended effective February 1, 2004; April 1, 2008.

General Authority:

Law Implemented:

NDCC 28-32-02

NDCC 43-23-11.1(1)

70-02-03-03. Commission split—Out of state. A licensed broker in this state may divide or share a real estate commission with a licensed broker in another state, ~~where if~~ the latter broker does not carry on any of the negotiations in this state, ~~and where similar privileges are extended by the other state to licensed brokers in this state~~ **either by physically entering the state or by communicating with the broker electronically or through other media.**

History: Amended effective October 1, 2015.

General Authority:

Law Implemented:

NDCC 43-23-11.1(1)

NDCC 43-23-11.1(1)

70-02-03-04. Listings. In instances where residential real property consists of separate dwelling units for one through four families, the licensee shall obtain a signed listing agreement in writing from the seller, properly identifying the listed property and containing all of the terms and conditions under which the property is to be sold; including the price, the commission to be paid, the signatures of all parties concerned, and definite expiration date prior to the time that the property is advertised or offered for sale. It shall contain no provision requiring a party signing the listing to notify the broker of the party's intention to cancel the listing after such definite expiration date. An "exclusive agency" listing or "exclusive right to sell" listing shall clearly indicate in the listing agreement that it is such an agreement and a copy shall be given to the owner at the time of signing. If the licensee chooses to represent both buyers and sellers in the same transaction, a separate dual agency disclosure statement must be provided in accordance with the provisions of section 70-02-03-15.1.

History: Amended effective September 1, 1994.

General Authority:

Law Implemented:

NDCC 28-32-02.2

NDCC 43-23-05

70-02-03-05. Listing contracts must include commission amount. All listing contracts or sales contracts must state the amount of brokerage agreed; either a specific amount or a specific percentage.

General Authority:

Law Implemented:

NDCC 43-23-11.1(1)

NDCC 43-23-11.1(1)

70-02-03-05.1. Buyer's broker agreements. In instances where residential real property consists of separate dwelling units for one through four families, a licensee must obtain a signed buyer's broker agreement from a buyer before performing any act as a buyer's representative. All buyer's broker agreements must be in writing and must include:

1. A definite expiration date.
2. The amount of commission or other compensation.
3. A clear statement explaining the services to be provided to the buyer, and the events or condition that will entitle the licensee to a commission or other compensation.
4. If the licensee chooses to represent both buyers and sellers in the same transaction, a separate dual agency disclosure statement in accordance with the provisions of section 70-02-03-15.1.

History: Effective September 1, 1994.

General Authority:

NDCC 28-32-02

Law Implemented:

NDCC 43-23-05

70-02-03-06. Offer to purchase. A broker or salesperson shall promptly tender to the seller every written offer to purchase obtained on the property involved and, upon obtaining a proper acceptance of the offer to purchase, shall promptly deliver true executed copies of same, signed by the seller and purchaser, to both seller and purchaser. All brokers and salespersons shall make certain that all of the terms and conditions of the real estate transaction are included in the offer to purchase. Brokers and salespersons shall also make certain that any changes in the text of the offer made by the seller are agreed to and initiated by the offeror in the first place before proceeding with the transaction. If any changes made are material or extensive, the entire offer or contract should be rewritten.

History: Amended effective January 1, 1992.

General Authority:

NDCC 43-23-11.1(1)

Law Implemented:

NDCC 43-23-11.1(1)

70-02-03-07. Closing statements. In every real estate sales transaction wherein the closing is handled by an attorney, bank, savings and loan association, or similarly recognized individual or group other than a real estate broker, it shall be the responsibility of the broker involved to see the party or parties represented by the broker receive a complete, detailed closing statement showing all of the receipts and disbursements handled in such transaction. The broker must retain true copies of such statements in the broker's files.

History: Amended effective April 1, 2008.

General Authority:

NDCC 28-32-02

Law Implemented:

NDCC 43-23-11.1(1)(o)

70-02-03-08. Legal advice. No licensee should engage in activities that constitute the practice of law and should recommend that title be examined and legal counsel be obtained when the interest of either party requires it.

General Authority:

NDCC 43-23-11.1(1)

Law Implemented:

NDCC 43-23-11.1(1)

70-02-03-09. Use of false or misleading documents. Any broker or salesperson licensed by the commission who uses, proposes the use of, agrees to the use of, or knowingly permits the use of any contract of sale, earnest money agreement, loan application, mortgage, note, or other document, which is not made known to the prospective lender or the 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, shall be deemed to have engaged in a course of misconduct permitting suspension or revocation of the broker's or salesperson's license as a broker or salesperson.

History: Amended effective August 1, 1981; January 1, 1992.

General Authority:

NDCC 43-23-11.1(1)

Law Implemented:

NDCC 43-23-11.1(1)

70-02-03-10. For sale signs. No signs shall be placed on any property for its sale or lease without the consent of the owner, or the owner's duly authorized agent.

History: Amended effective April 1, 2008.

General Authority:

NDCC 28-32-02

Law Implemented:

NDCC 43-23-11.1(1)

70-02-03-11. Negotiate listings. A real estate licensee shall not negotiate a sale, exchange, lease, or listing contract of real property directly with an owner for compensation from the owner or a purchase, exchange, lease, or exclusive right to buy contract with a buyer, if the licensee knows that the owner or the buyer 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, or an exclusive right to buy, to another broker. This section does not preclude a licensee from entering into an agency contract with an owner or a buyer who is a party to an existing agency contract when the contact culminating in such a contract is initiated by the owner or buyer, and not by the licensee, and provided that such agency contract does not become effective until after the expiration or release of any existing agency contract.

History: Amended effective March 1, 2002.

General Authority:

NDCC 43-23-11.1(1)

Law Implemented:

NDCC 43-23-11.1(1)

70-02-03-12. Refund of purchaser's money. When for any reason the owner fails, refuses, neglects, or is unable to consummate the transaction as provided for in the contract, and through no fault or neglect of the purchaser the real estate transaction cannot be completed, the broker has no right to any portion of the deposit money which was deposited by the purchaser, even though the commission is earned, and such deposit should be returned to the purchaser at once and the broker should look to the owner for the broker's compensation.

General Authority:

NDCC 43-23-11.1(1)

Law Implemented:

NDCC 43-23-11.1(1)

70-02-03-13. Personal interest.

1. A broker shall not, either directly or indirectly, buy for oneself property listed with the broker or as to which the broker has been approached by the owner to act as broker, nor shall the broker acquire interest in any other property therein, either directly or indirectly, without first making the broker's true position clearly known to the owner. Satisfactory written proof of this fact must be produced by the broker upon a request.
2. A broker shall not take an option to oneself, either directly or indirectly, upon property for the sale of which the broker has been approached by the owner to act as a broker, without first making the broker's true position clearly known that the broker is now acting as a prospective buyer and is no longer acting as a broker or agent for the owner. Satisfactory proof of this must be produced by the broker upon request.
3. A salesperson shall not buy for oneself, either directly or indirectly, property listed with the salesperson's employer broker, nor shall the salesperson acquire interest in any other property, either directly or indirectly, without first making the salesperson's true position clearly known to the owner, nor shall the salesperson take an option unto oneself from

any such owner or to anyone on the salesperson's behalf upon any property without first making the salesperson's position known. Satisfactory written proof of these facts must be produced by the salesperson on request.

4. A real estate broker or salesperson who sells property in which the broker or salesperson owns an interest must make such interest known to the purchaser.

History: Amended effective January 1, 1992.

General Authority:

NDCC 43-23-11.1(1)

Law Implemented:

NDCC 43-23-11.1(1)

70-02-03-14. Accepting nonnegotiable instruments. A broker or salesperson shall not accept any note or any nonnegotiable instrument or anything of value not readily negotiable as a deposit on a contract or offer to purchase without the knowledge and permission of the broker's or salesperson's principal.

History: Amended effective January 1, 1992.

General Authority:

NDCC 43-23-11.1(1)

Law Implemented:

NDCC 43-23-11.1(1)

70-02-03-15. Agency disclosure required. In all real estate transactions the licensee is the agent of the seller unless all parties otherwise agree in writing. The agency relationship must be disclosed in writing to the parties before the signing of a written contractual agreement. The disclosure language must state at least the following information in substantially this form:

"I _____, a real estate licensee, stipulate that I am
representing the _____ (Buyer/Seller) in this transaction.

Licensee"

Each licensee in the transaction shall make such a disclosure.

This section applies only to transactions involving agricultural and commercial property, residential property that provides separate dwelling units for five or more families, and commercial leaseholds. Residential property that provides separate dwelling units for one through four families is subject to the agency disclosure requirement of Section 70-02-03-15.1.

History: Effective January 1, 1988; amended effective September 1, 1994.

General Authority:

NDCC 28-32-02

Law Implemented:

NDCC 43-23-05

70-02-03-15.1. Licensee to disclose agency relationships—Duty of confidentiality.

1. As used in this section, unless the context or subject matter otherwise requires:
 - a. "Dual agency" means a situation in which a licensee owes a duty to more than one party to the real estate transaction. Dual agency is established as follows:
 - (1) When one licensee represents both the buyer and the seller in a real estate transaction; or
 - (2) When two or more licensees, licensed to the same broker, each represent a party to the real estate transaction.
 - b. "Party to the real estate transaction" includes any individual or individuals who are a seller or buyer, or potential seller or buyer.
 - c. "Real estate transaction" means any transaction involving residential real property that consists of separate dwelling units for one through four families. "Real estate transaction" does not include transactions involving agricultural or commercial property, residential property that provides separate dwelling units for five or more families, or commercial leaseholds.

2. In all real estate transactions in which the licensee represents any party to a real estate transaction, the licensee must make an affirmative written disclosure identifying which party that person represents in the transaction. The disclosure must be made at the time of the first substantive contact between the licensee and any party to the real estate transaction. The disclosure must be represented by a separate written document, and offered to the party to the real estate transaction for signature. True copies of the disclosure form must be retained in the broker's file. As used in this subsection, the term "substantive contact" means:
 - a. When representing the seller, prior to the signing of a listing agreement.
 - b. When representing a buyer, prior to the signing of a buyer's broker agreement.
 - c. As to all other parties, such as potential buyers or sellers, who are not represented by the licensee, prior to the discussion of personal financial information or the commencement of negotiations, which could affect that party's bargaining position in the transaction. However, a licensee shall have complied with the provisions of this subsection if, in those circumstances where it is impossible as a practical matter to obtain a signed written disclosure statement from a party at the time of the first substantive contact, such as telephone contact with an absent party, the licensee orally discloses the status of the licensee's representation and, as soon as practicable thereafter, makes the written disclosure required by this subsection.
 - d. As to any change in the licensee's representation, including dual agency, that makes the initial disclosure of representation incomplete, misleading, or inaccurate, a new disclosure must be made at once to any party to the transaction.
 - e. Nothing in this section requires written notice to each prospective buyer who comes to an open house display of real property; provided, however, the licensee, by sign, poster, distributed listing literature, or property description form, conspicuously discloses the licensee's agency relationship.
3. Each licensee owes a duty of confidentiality to a party being represented in a real estate transaction. The following information may not be disclosed without the informed, written consent of the party being represented:
 - a. That the party being represented is willing to pay more than the purchase price or lease price offered for the property.
 - b. That the party being represented is willing to accept less than the purchase price or lease price being asked for the property.
 - c. What the motivating factors are for the buying, selling, or leasing of the property by the party being represented.
 - d. That the party being represented will agree to terms for financing of the property other than those which are offered.
4. A licensee shall also keep confidential all information received from a party being represented, which has been made confidential by request or instruction of that party.
5. The obligation of confidentiality set forth in subsections 3 and 4 continues in effect during the time a party is being actively represented, and continues on after the termination, expiration, or completion of the representation until one of the following occurs:
 - a. The party being represented permits the disclosure by subsequent word or conduct.
 - b. Disclosure is required by law, by court order, or order of the commission.
 - c. The information is made public through disclosure from a source other than the licensee.
6. The provisions of subsections 3 and 4 do not serve to permit or require a licensee to keep confidential any material defects in the property of which the licensee is aware or which would constitute fraudulent misrepresentation unless disclosed.
7. The written disclosure required by this section must advise a party to the real estate transaction of the different types of representation that are available. The explanation must include information pertaining to how that party's interest shall be represented if the party

chooses the licensee to act as the owner's agent, the buyer's agent, or as a dual agent. The written disclosure forms, in clearly understood terms, must inform the party to the transaction as follows:

- a. If the party chooses seller representation, it must be explained that this relationship typically arises from entering into a listing agreement, or by agreeing to act as a subagent through the listing agency. A subagent may work in a different real estate office. A listing agent or subagent can assist the buyer but does not represent that party. A listing agent or subagent is required to place the interest of the owner first, and a buyer should not tell a listing agent or subagent anything that the buyer would not want the owner to know, because the listing agent or subagent must disclose any material information to the owner. Also, it must be explained that if the real estate brokerage firm and its licensees represent two or more sellers as clients who both desire to offer competing real property for sale or lease, the real estate brokerage firm and its licensees may do so without breaching any duty to such clients. In such an event, the brokerage firm and its licensees still owe agency duties to the clients, except as limited in this subsection.
- b. If the party chooses buyer representation, it must be explained that the licensee typically becomes the buyer's agent by entering into an agreement for such representation. A buyer's agent may assist the owner but does not represent the owner. A buyer's agent must place the interest of the buyer first, and the owner should not tell a buyer's agent anything the owner would not want the buyer to know because the buyer's agent must disclose any material information to the buyer. Also, it must be explained that if the real estate brokerage firm and its licensees represent two or more buyers as clients who desire to make an offer to purchase the same real property, the brokerage firm and its licensees do not breach any duty by assisting such clients with multiple offers even though the interest of such clients are competing. However, if the same licensee represents two or more buyers who desire to make an offer to purchase the same property, that licensee must disclose to buyer clients the fact that a competing written offer has been submitted by another buyer client of that licensee without disclosing the identity of the other buyer client or the terms of the offer. In such an event, the brokerage firm and its licensees still owe agency duties to the clients, except as limited in this subsection.
- c. If the party selects dual agency, it must be explained that the licensee must enter into a written agreement obtaining the consent of both parties before such representation is authorized. This agreement must set forth who will be responsible for paying the licensee's fee. Under this arrangement, the licensee is required to treat both parties honestly and impartially so as not to favor one over the other. Unless written permission from the appropriate party is obtained, the licensee is prohibited from disclosing that the owner will accept less than the asking price, that the buyer will pay a price greater than that submitted in the written offer, or any other information of a confidential nature or which the party has instructed the licensee not to disclose. Potential conflicts exist when the licensee represents more than one party, and the licensee's activities may be more limited. The licensee is required to inform each party of any facts that would affect a party's decision to permit representation of both the owner and buyer. This includes any arrangement by which the licensee will or expects to represent a party in a future transaction.
- d. It must be explained that a duty of loyalty and faithfulness are owed to the party or parties to the transaction with whom the licensee has an agency relationship, and the licensee must inform that party of all important information which might affect a decision concerning the real estate transaction. This includes disclosure of any material facts to the buyer that may adversely and significantly affect that person's

use or enjoyment of the property. It also includes disclosure of any information to either party which may indicate that one of the parties does not intend to perform in accordance with the terms of the purchase agreement or any other written agreement or obligation. However, it must be explained that knowledge of one licensee of a real estate brokerage firm regarding an affected real property is not imputed to another licensee in the same brokerage firm and no duty is imposed upon a licensee in a real estate brokerage firm to disclose facts that are known by that licensee regarding the affected real property to another licensee within the same real estate brokerage firm. Also, it must be explained that unless otherwise agreed in writing, a real estate brokerage firm and its licensees are not obligated to a client, a customer, or any other person to discover defects in any real property, to verify the ownership of any real property, or to independently verify the accuracy or completeness of any statement or representation made by any person other than the real estate brokerage firm and the real estate brokerage firm's licensees involved in the transaction under question.

- e. It must be explained that a licensee must deal honestly with any party to a real estate transaction, regardless of whether the party is represented by that licensee.
- 8. No person required to be licensed by North Dakota Century Code chapter 43-23 may maintain any action to recover any commission, fee, or other compensation with respect to the purchase, sale, lease, or other disposition or conveyance of real property, or with respect to the offer, negotiation, or attempt to negotiate any sale, lease, purchase, or other disposition, unless that person's agency relationship has been disclosed to the party or parties to the transaction in accordance with the requirements of this section.
- 9. The commission may approve a specific form or forms to implement the provisions of this section.

History: Effective September 1, 1994; amended effective April 1, 2012.

General Authority:

NDCC 28-32-02

Law Implemented:

NDCC 43-23-05

70-02-03-15.2 Licensee to disclose nonagency relationship. In all real estate transactions in which the licensee performs services for a customer, as that term is defined by North Dakota Century Code section 43-23-06.1, the licensee must disclose the nonagency relationship in writing to the customer. This document must be signed by the customer prior to the licensee performing any services for the customer. A copy of the signed written disclosure must be retained in the broker's file. The written disclosure must explain that as to a customer the real estate brokerage firm and its licensees are nonagents that owe to the customer only limited legal duties. These limited legal duties are to perform the customary acts typically performed by real estate licensees in assisting a transaction to the transaction's closing or conclusion with honesty and good faith and to disclose to the customer any adverse material facts actually known by the licensee which pertain to the title of the real property, the physical condition of the real property, and defects in the real property. The real estate brokerage firm and its licensees do not owe the agency duties of loyalty, obedience, disclosure, confidentiality, reasonable care, diligence, and accounting to the customer. The disclosure must also explain that if the brokerage firm and its licensees represent another party in the same real estate transaction, the licensee is required to place the interest of the represented client first.

History: Effective April 1, 2012.

General Authority:

NDCC 28-32-02

Law Implemented:

NDCC 43-23-05

70-02-03-16. Licensee acting in own behalf to set forth terms and conditions and make disclosure. A broker or salesperson acting in his own behalf shall disclose his licensed status in writing to any person with whom he purchases, sells, exchanges, or options real property. All the terms and conditions of the transaction as agreed upon must be in writing,

properly executed, and a copy furnished to such person. Copies of the disclosure of his licensed status and of the documents containing the terms and conditions of the transaction must be retained by the broker or salesperson and made available to the commission upon request.

History: Effective September 6, 1989; amended effective January 1, 1992.

General Authority:

NDCC 43-23-11.1(1)

Law Implemented:

NDCC 43-23-11.1(1)

70-02-03-17. Designated broker—Appointed agent.

1. Appointed agent procedures and disclosure.
 - a. A designated broker appointing a licensee to act as an agent of a client shall take ordinary and necessary care to protect confidential information disclosed by the client to the appointed agent.
 - b. An appointed agent may reveal to the agency's designated broker confidential information of a client for seeking advice or assistance for the benefit of the client about a possible transaction. The designated broker shall treat confidential information as such and may not disclose such information unless otherwise requested or permitted by the client who originally disclosed the confidential information.
2. Appointed agent—Written disclosure.
 - a. An appointed agent shall disclose in writing such appointment to the client before entering into a brokerage agreement and shall include, at a minimum, the following provisions:
 - (1) The name of the appointed agent;
 - (2) A statement that the appointed agent will be the client's agent and will owe the client fiduciary duties, which among other things, include the obligation not to reveal confidential information obtained from the client to other licensees, except to the designated broker for seeking advice or assistance for the benefit of the client;
 - (3) A statement that the agency may be representing both the seller and the buyer in connection with the sale or purchase of real estate;
 - (4) A statement that other licensees may be appointed during the term of the brokerage agreement should the appointed agent not be able to fulfill the terms of the brokerage agreement or as by agreement between the designated broker and client. An appointment of another agent as a new or additional agent does not relieve the first appointed agent of any of the fiduciary duties owed to the client. At the time of the appointment of the new or additional agents, the designated broker must comply with the provisions of this section; and
 - (5) A section for the client to consent or not consent, in writing, to the appointment.
3. Appointed agent's duty to the designated broker. In any appointed agent transaction, the appointed agent shall keep the designated broker fully informed of all activities conducted by the appointed agent during the transaction and shall notify the designated broker of any other activities that might affect the responsibility of the designated broker.

History: Effective April 1, 1996; Amended effective July 1, 2010.

General Authority:

NDCC 28-32-02

Law Implemented:

NDCC 43-23-12.3

**CHAPTER 70-02-04
CONTINUING EDUCATION**

Section

70-02-04-01

70-02-04-02

**Continuing Education Defined
Hours Required**

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70-02-04-21	Continuing Education Certificate of Attendance
70-02-04-22	Distance Education Courses Must Be Approved
70-02-04-23	Model Rule for Distance Education

70-02-04-01. Continuing education defined. As used in this chapter, continuing education, unless the context otherwise requires, means accredited educational experience derived from participation in approved lectures, seminars, distance education, and correspondence courses in areas related to real estate, which has been approved by the commission, to maintain and improve the professional skills and upgrade the standard of all real estate licensees.

The commission considers courses in the following areas to be acceptable, but not limited to, when considering approval:

1. Real estate ethics;
2. Legislative issues that influence real estate practice;
3. The administration of licensing provisions of real estate law and the rules, including compliance and regulatory practices;
4. Real estate financing, including mortgages and other financing techniques;
5. Real estate market measurement and evaluation, including site evaluations, market data, and feasibility studies;
6. Real estate brokerage administration, including office management, trust accounts, and employee contracts;
7. Real property management, including leasing agreements, accounting procedures, and management contracts;
8. Real property exchange;
9. Land use planning and zoning;
10. Real estate securities and syndication;
11. Estate building and portfolio management;
12. Accounting and taxation as applied to real property;
13. Land development;

14. Real estate appraising;
15. Real estate marketing procedures;
16. Marketing business opportunities;
17. Business courses which relate to the practice of real estate;
18. Agency representation; and
19. Contracts.

History: Effective August 1, 1981; amended effective May 1, 1986; January 1, 2006.

General Authority:

NDCC 28-32-02, 43-23-08.2

Law Implemented:

NDCC 43-23-08.2

70-02-04-02. Hours required. To qualify for the renewal of a real estate license, each broker or salesperson must complete nine hours of continuing education in approved courses every continuing education period. The continuing education period is ~~one calendar year~~ **twelve months preceding the renewal application deadline date**. The commission may require that a portion or all of the continuing education hours must be in one or more specific areas. Such areas may include the following:

1. Fair housing and antitrust.
2. Environmental issues.
3. License law and ethics.
4. Agency law and principles.
5. Contracts.

History: Effective August 1, 1981; amended effective January 1, 1992; October 1, 1993; December 1, 1999; July 1, 2010; **October 1, 2015.**

General Authority:

NDCC 28-32-02, 43-23-08(6)

Law Implemented:

NDCC 43-23-08.2

70-02-04-03. Hour defined. An hour of continuing education means a clock-hour. A clock-hour may be a fifty-minute hour.

History: Effective August 1, 1981.

General Authority:

NDCC 43-23-08.2

Law Implemented:

NDCC 43-23-08.2

70-02-04-04. Exceptions and extensions. The commission may make exceptions and grant extensions for continuing education as follows:

1. For reasons of health, military service, or other good cause if adequate proof is provided to the commission; and
2. A nonresident licensee may be exempted from the continuing education requirements if the licensee meets the real estate licensing requirements in the state of the licensee's residence.

History: Effective August 1, 1981.

General Authority:

NDCC 43-23-08.2

Law Implemented:

NDCC 43-23-08.2

70-02-04-05. Nonqualifying courses. The following course offerings will not be considered as qualifying for continuing education purposes:

1. "Cram courses" for examinations.
2. Offerings in mechanical office and business skills such as typing, speed reading, memory improvement, language, and report writing.
3. Sales promotion or other meetings held in conjunction with the general business of the attendee or the attendee's employer.
4. Time devoted to breakfast, luncheons, or dinners.
5. Any course certified by the use of a challenge examination. All students must complete the

required number of classroom hours in order to receive certification.

The listing of the above offerings does not limit the commission's authority to disapprove any application which fails to meet the standards for course approval.

History: Effective August 1, 1981; amended effective January 1, 1992; October 1, 1993; December 1, 1999; January 1, 2006.

General Authority:
NDCC 43-23-08.2

Law Implemented:
NDCC 43-23-08.2

70-02-04-06. Criteria for course approval. The commission may approve any course, seminar, conference, correspondence course, or equivalent that is provided by the commission, a public or private school, organization, association, person, corporation, society, or similar organization. The commission, when acting on an application for approval of a course offering, will consider, but not be limited to, the following criteria:

1. Course offerings will be eligible for approval only if the total instruction time of the offering is two hours or more.
2. A school shall certify to the best of its knowledge the attendance of each student at the offering. The school's criteria for measuring attendance shall be submitted in the application for course approval on a form prescribed by the commission.
3. The school shall maintain, for a minimum of three years, records of students successfully completing any course offering.
4. Credit will be earned on the basis of attendance, or in the case of correspondence courses, completion of the course.
5. Each course of study shall have a coordinator or administrator supervising the program. The coordinator shall be qualified, either through previous education or experience, to administer a real estate course of study, to evaluate course content and instructors, and to analyze examinations.
6. All instructors in a real estate course of study shall file with the commission credentials showing the necessary specialized preparation, training, and experience to ensure competent instruction. Approval of each instructor will be on an individual basis, and approval must be obtained from the commission prior to the instructor's lecture in an approved course of study. Instructors, lecturers, seminar leaders, and others who present a continuing education requirement course offering must meet at least one of the following qualifications:
 - a. A bachelor's degree in the field in which the person is to teach.
 - b. A valid teaching credential or certificate from North Dakota or another state authorizing the holder to teach in the field of instruction being offered.
 - c. Five years' full-time experience in a profession, trade, or technical occupation in the applicable field.
 - d. Any combination of at least five years of full-time applicable field and college level education.

History: Effective August 1, 1981; amended effective October 1, 1993.

General Authority:
NDCC 43-23-08.2

Law Implemented:
NDCC 43-23-08.2

70-02-04-07. Application for approval of course offerings. A school shall apply for approval of course offerings on a form prescribed by the commission. The application form shall include, but not be limited to, the following information and enclosures:

1. The name, address, and telephone number of the school.
2. The title of the course offering.
3. A complete description or copies of all materials to be distributed to the participants.
4. The date and exact location of each presentation of the course offering.
5. The duration and time of course offering.

6. A comprehensive, detailed outline of the subject matter together with the time sequence of each segment, faculty for each segment, and teaching technique used in each segment.
7. A sample of any proposed advertising used for promotional purposes.
8. The method of evaluation of the program.
9. The procedure for measuring attendance.
10. A description of the faculty, including name, professional background, and practical or teaching experience. A complete resume may be furnished.

History: Effective August 1, 1981.

General Authority:

NDCC 43-23-08.2

Law Implemented:

NDCC 43-23-08.2

70-02-04-08. Filing deadline for course approvals. Application for course approvals must be filed thirty days preceding the proposed public offering.

History: Effective August 1, 1981.

General Authority:

NDCC 43-23-08.2

Law Implemented:

NDCC 43-23-08.2

70-02-04-09. Application for post course approval. A school may seek approval of a course subsequent to a course offering by submitting all information requested on the commission's application forms.

History: Effective August 1, 1981.

General Authority:

NDCC 43-23-08.2

Law Implemented:

NDCC 43-23-08.2

70-02-04-10. Material change. The school's coordinator or instructor of each approved real estate offering shall promptly notify the commission of any material changes contained in the application for approval or attached exhibits. Changes shall be deemed acceptable to the commission if no action has been taken after fourteen days from the date received by the commission.

History: Effective August 1, 1981.

General Authority:

NDCC 43-23-08.2

Law Implemented:

NDCC 43-23-08.2

70-02-04-11. Suspension, revocation, or denial of course approval. The commission may deny, suspend, or revoke approval of a real estate course offering, coordinator, or instructor if it is determined that it is not in compliance with the statute or rules and regulations. If disciplinary action is taken a written order of suspension, revocation, or denial of approval will be issued.

History: Effective August 1, 1981.

General Authority:

NDCC 43-23-08.2

Law Implemented:

NDCC 43-23-08.2

70-02-04-12. Correspondence programs. The amount of credit to be allowed for correspondence programs shall be recommended by the program sponsor based upon the average completion time calculated by the sponsor after it has conducted "field tests". Although the program sponsor must make recommendations concerning the number of credit hours that should be granted, the number of credit hours that will be granted shall be determined by the commission.

History: Effective August 1, 1981; amended effective January 1, 1992; January 1, 2006.

General Authority:

NDCC 43-23-08.2

Law Implemented:

NDCC 43-23-08.2

70-02-04-13. Substantively identical offerings. Courses may not be taken for continuing education more than once during any continuing education period, unless material has been

significantly changed, or updated, or both.

History: Effective August 1, 1981; amended effective December 1, 1999; July 1, 2010.

General Authority:

Law Implemented:

NDCC 28-32-02, 43-23-08 (6)

NDCC 43-23-08.2

70-02-04-14. Maximum hours of accreditation per day. The commission will allow a maximum of eight hours of accreditation per day **for prelicensing, postlicensing and continuing education.**

History: Effective August 1, 1981; **amended effective October 1, 2105.**

General Authority:

Law Implemented:

NDCC 43-23-08.2

NDCC 43-23-08.2

70-02-04-15. Exemptions from continuing education requirement. Any salesperson applicant, upon successful completion of the required postlicensing education requirement, evidence of which has been furnished to the commission by the salesperson applicant's broker, is exempt from the continuing education requirement for only the continuing education period during which the salesperson applicant successfully completed the postlicensing education. Any broker applicant, upon successful completion of the real estate licensing examination is exempt from the continuing education requirement for only the continuing education period during which the broker applicant successfully completed said examination.

History: Effective August 1, 1981; amended effective January 1, 1992;

December 1, 1999; January 1, 2006; July 1, 2010.

General Authority:

Law Implemented:

NDCC 28-32-02, 43-23-08 (6)

NDCC 43-23-08.2

70-02-04-16. Service as a lecturer, discussion leader, or speaker. For those persons who serve as a lecturer, discussion leader, or speaker regarding a real estate continuing education program, the commission will grant one-hour credit for every hour of service as an instructor or speaker. Requests for credit must be accompanied by an outline of the instruction, discussion, or speech. No credit shall be given for the teaching of a course which is the same or substantially the same as one taught for credit within the same continuing education period. The maximum credit given for service as a lecturer, discussion leader, or speaker will not exceed fifty percent of the continuing education requirement for any continuing education period.

History: Effective August 1, 1981; amended effective December 1, 1999; July 1, 2010.

General Authority:

Law Implemented:

NDCC 28-32-02, 43-23-08(6)

NDCC 43-23-08.2

70-02-04-17. Responsibilities of program sponsors. In addition to other responsibilities imposed on program sponsors, they must comply with the following:

1. Disclose to prospective participants the prerequisites, course content, and number of continuing education hours in the program.
2. Selection and review of instructors. The program sponsor or coordinator has the obligation for selecting and assigning qualified instructors for the continuing education program. Sponsors are required to evaluate the performance of the instructors at the conclusion of each program to determine their suitability for continuing to serve as instructors in the future.

History: Effective August 1, 1981.

General Authority:

Law Implemented:

NDCC 43-23-08.2

NDCC 43-23-08.2

70-02-04-18. Facilities. Each course offering shall have classrooms, facilities, and personnel necessary to implement the offerings adequately.

History: Effective August 1, 1981.

General Authority:

NDCC 43-23-08.2

Law Implemented:

NDCC 43-23-08.2

70-02-04-19. Certificate of accreditation. A certificate of accreditation shall be granted for each course of study approved by the commission. This certificate shall remain valid for a two-year period at which time the course will be reviewed and, if approved, will continue valid for the next two-year period unless suspended or revoked.

History: Effective August 1, 1981; amended effective December 1, 1999.

General Authority:

NDCC 43-23-08.2

Law Implemented:

NDCC 43-23-08.2

70-02-04-20. Inspections. By applying for the commission's approval of any course in real estate, the sponsor or coordinator agrees to permit periodic inspections and monitoring by the commission or its authorized representative for the purpose of evaluating facilities, course content, instructor performance, or any other relevant aspect of the administration and conduct of such course.

History: Effective August 1, 1981.

General Authority:

NDCC 43-23-08.2

Law Implemented:

NDCC 43-23-08.2

70-02-04-21. Continuing education certificate of attendance. All schools, seminars, and workshops shall provide an individual certificate of attendance to each licensee upon completion of the educational program or training session under the following conditions:

1. No certificate of attendance shall be issued to a licensee who is absent for more than ten percent of the classroom hours.
2. The certificate shall contain information as to the licensee's name, course title, date, location of course, number of approved credit hours, and signature of course sponsor or instructor.
3. The licensee shall retain attendance certificate. The responsibility for recordkeeping will remain with the licensee.
4. The North Dakota real estate commission shall not be required to maintain a list of licensees and their completed courses of education.

History: Effective August 1, 1981; amended effective December 1, 1999; January 1, 2006.

General Authority:

NDCC 43-23-08.2

Law Implemented:

NDCC 43-23-08.2

70-02-04-22. Distance education courses must be approved. Courses of study offered in a distance education format must be approved by the real estate commission and certified by the association of real estate license law officials. A student must complete the distance education course within one year of the date of enrollment.

History: Effective December 1, 1999.

General Authority:

NDCC 43-23-08.2

Law Implemented:

NDCC 43-23-08.2

70-02-04-23. Model rule for distance education. Distance education is defined as courses in which instruction does not take place in a traditional classroom setting but rather through other media if the teacher and student are separated by distance and sometimes by time.

1. A distance education course shall be approved if the real estate commission determines to its satisfaction that:

- a. The distance education course serves to protect the public by contributing to the maintenance and improvement of the quality of real estate services provided by real estate licensees to the public;
 - b. An appropriate and complete application has been filed and approved by the real estate commission;
 - c. The information specified in the guidelines for distance education as adopted by the real estate commission has been submitted and approved; and
 - d. The distance education course meets the content and all other requirements prescribed in North Dakota Administrative Code chapter 70-02-02 for prelicensing education required by subsection 4 of North Dakota Century Code section 43-23-08 or the requirements prescribed in North Dakota Administrative Code chapter 70-02-04 for continuing education required by North Dakota Century Code section 43-23-08.2.
2. Courses which are presently ARELLO-certified will be approved under this rule upon provision of appropriate documentation that the ARELLO certification is in effect and that the course meets the content requirements of the rules and statutes listed in subsection 1 and any other requirements of the real estate commission. Approval under this subsection will cease immediately should ARELLO certification be discontinued for any reason.

History: Effective May 1, 2000.

General Authority:

NDCC 43-23-08.2

Law Implemented:

NDCC 43-23-08.2

CHAPTER 70-02-05 ERRORS AND OMISSIONS INSURANCE

Section

70-02-05-01	Definitions
70-02-05-02	Insurance Required
70-02-05-03	Minimum Standards
70-02-05-04	Exceptions to Coverage
70-02-05-05	Group Policy Approval Requirements
70-02-05-06	Equivalent Optional Coverage
70-02-05-07	Standards for Equivalent Optional Coverage
70-02-05-08	Time for Filing Certification of Optional Coverage
70-02-05-09	Nonpayment of Premium
70-02-05-10	Surrender of License for Failure to Provide Proof of Insurance
70-02-05-11	Notification Required for Cancellation
70-02-05-12	Proof of Insurance Required to Activate License
70-02-05-13	Authenticity of Coverage

70-02-05-01. Definitions. When used in this chapter, unless the context otherwise requires:

1. "Aggregate limit" means a provision in an insurance contract limiting the maximum liability of an insurer for a series of losses in a given time period, such as the policy term.
2. "Equivalent coverage" means coverage obtained independently of the group plan available from the commission and subject to the terms and conditions as set forth in this chapter.
3. "Extended reporting period" means a designated period of time after a claims-made policy has expired during which a claim may be made and coverage triggered as if the claim has been made during the policy period.
4. "Licensee" means any active individual broker, broker associate, or salesperson.
5. "Prior acts coverage" means claims that are made during a current policy period, but the

act or acts causing the claim or injuries for which the claim is made occurred prior to the inception of the current policy period.

6. "Proof of coverage" means a certificate of insurance.
7. "Qualified insurance carrier" means an insurance carrier:
 - a. Which for the entire term of its contract shall provide the group plan of errors and omissions insurance contemplated by these rules, maintains an A.M. Best financial size category of class VI or higher;
 - b. Which shall remain for the policy term authorized by the North Dakota insurance department to do business in North Dakota as an insurance carrier;
 - c. Which is and will remain for the policy term qualified and authorized by the North Dakota insurance department to write policies of errors and omissions insurance in North Dakota of the type contemplated by these rules;
 - d. Which, after competitive bidding, has been notified by the commission that it is the successful bidder for the group plan to provide the errors and omissions insurance contemplated by these rules; and
 - e. Which has entered into a contract to provide said group errors and omissions plan in conformity with said contract, these rules, and the North Dakota license law.

The insurance carrier will collect premiums, maintain records, and report names of those insured and a record of claims to the commission on a timely basis and at no cost to the state.

8. "Retroactive date" means the date when the first real estate errors and omissions coverage was effective insuring the named insured on a claims-made basis and since which time the insured has been continuously insured.
9. "Single-limit liability" means the maximum limit payable, per licensee, for damages arising out of the same error, omission, or wrongful act.

History: Effective February 1, 2002.

General Authority:

NDCC 43-23-19

Law Implemented:

NDCC 43-23-19

70-02-05-02. Insurance required. An applicant for issuance of a license on active status, a licensee renewing a license, or an inactive licensee activating a license must submit proof of insurance coverage through the group plan or through certification of equivalent coverage.

History: Effective February 1, 2002.

General Authority:

NDCC 43-23-19

Law Implemented:

NDCC 43-23-19

70-02-05-03. Minimum standards. The group policy obtained by the commission shall provide to each individual licensee, at a minimum, the following terms of coverage:

1. Not less than one hundred thousand dollars single-limit liability coverage for each licensee per occurrence or claim made, not including costs for investigation or defense;
2. An annual aggregate limit of not less than five hundred thousand dollars per licensee;
3. A deductible amount for each occurrence of not more than one thousand dollars for single-limit liability coverage and one thousand dollars maximum additional deductible for defense and investigation;
4. An extended reporting provision of ninety days and an option to purchase an additional three years extended reporting provision for a premium not to exceed two hundred percent of the premium charged for the last year of the terminating coverage;
5. Coverage under this section for covered acts in any state, United States territory, or Canada in which a covered individual, domiciled in North Dakota, holds a license;
6. Stacking of benefits;
7. Proration of premiums for coverage that is purchased during the course of a calendar year but with no provision for refunds of unearned premiums;

8. The ability of a licensee, upon payment of an additional premium, to obtain higher or excess coverage or to purchase additional coverages from the group carrier as may be determined by the carrier;
 9. That coverage is individual and license-specific and will cover the licensee regardless of changes in employing broker; and
 10. Prior acts coverage shall be offered to licensees with continuous past coverage.
- History: Effective February 1, 2002.

General Authority:
NDCC 43-23-19

Law Implemented:
NDCC 43-23-19

70-02-05-04. Exceptions to coverage. Except as provided in this section, coverage may not exclude claims brought against the insured licensee arising out of an act or failure to act by the licensee when performing a professional service for which a real estate license is required. Coverage may limit or exclude claims brought against a licensee which arise as follows:

1. Out of claims or suits made or brought by any insured person against any other insured person within the same firm or from compensation disputes between licensees;
2. Out of loss assumed under contract or agreement, except for liability the insured would have had in the absence of such agreements;
3. From any criminal, dishonest, actual fraud, or willful act or omission. This exclusion does not apply to any insured person who did not personally participate in committing such an act or omission and who, upon having knowledge of the act or omission, reported it;
4. From unlawful discrimination committed by or for the insured person;
5. From fines or penalties imposed by law;
6. From failure to maintain any type or amount of insurance for managed property;
7. From bodily injury, personal injury, advertising injury, or property damage;
8. From related business activities for which a license is not required under this chapter;
9. From involvement in any real estate investment contract or syndication as a partner, joint venturer, or underwriter;
10. From hazardous materials, nuclear materials, or pollutants;
11. From prior wrongful acts;
12. From management or sale of property in which the insured or spouse has more than a ten percent financial or ownership interest. This exclusion does not apply for one year from the date a property is acquired under a guaranteed sale listing contract if the property is listed for sale during that entire period;
13. From any violation of the Securities Act of 1933, as amended through July 1, 1993, or the Securities Exchange Act of 1934, as amended through July 1, 1993, or any state blue sky or securities law or similar state or federal statutes; or
14. Other standard exclusions that are typical in the professional liability insurance industry may be permitted, subject to the approval of the North Dakota real estate commission.

History: Effective February 1, 2002.

General Authority:
NDCC 43-23-19

Law Implemented:
NDCC 43-23-19

70-02-05-05. Group policy approval requirements. Any group policy to be issued must conform to the standards and practices of the insurance industry and be approved by the North Dakota insurance department.

History: Effective February 1, 2002.

General Authority:
NDCC 43-23-19

Law Implemented:
NDCC 43-23-19

70-02-05-06. Equivalent coverage. An active licensee who chooses the option of obtaining errors and omissions insurance independently from a carrier other than the group

carrier under contract with the commission must show evidence of coverage by providing certification of coverage on a form prescribed by the commission. The form must show proof that the licensee has coverage in compliance with the minimum standards established by section 70-02-05-07. The form must be signed by an authorized representative of the insurance company and must contain a cancellation notification clause as required by section 70-02-05-09.

History: Effective February 1, 2002.

General Authority:

NDCC 43-23-19

Law Implemented:

NDCC 43-23-19

70-02-05-07. Standards for equivalent coverage. A carrier issuing insurance coverage pursuant to North Dakota Century Code section 43-23-22 must be an admitted carrier in North Dakota or an approved surplus lines carrier in the state in which the licensee being certified resides. All activities contemplated under North Dakota Century Code sections 43-23-19 through 43-23-23 must be covered.

The insurance must provide a minimum, not less than one hundred thousand dollars single-limit liability coverage for each licensee for each occurrence or claim made, not including the cost of investigation or defense, and an annual aggregate of five hundred thousand dollars for each licensee, not including the cost of investigation and defense. A responsible broker may comply with this requirement by certifying coverages of a minimum of five hundred thousand dollars/one million dollars, if all licensees associated with the broker are covered.

A person who resides in and is licensed in a state that has a mandated program of errors and omissions insurance and who is also licensed in North Dakota meets the requirements for errors and omissions insurance in North Dakota upon providing proof that the person meets the requirements of the person's state of residence.

History: Effective February 1, 2002.

General Authority:

NDCC 43-23-19

Law Implemented:

NDCC 43-23-19

70-02-05-08. Time for filing certification of equivalent coverage.

Certification of equivalent coverage must be filed with the commission by five p.m. on the date of expiration of coverage. If the certification is not filed on time, the commission shall place the license on inactive status on that date.

History: Effective February 1, 2002.

General Authority:

NDCC 43-23-19

Law Implemented:

NDCC 43-23-19

70-02-05-09. Nonpayment of premium. If a certifying insurance company that submitted certification of equivalent coverage or group plan notifies the commission that a licensee has not paid a premium, the commission shall place that licensee's license on inactive status as of the date of termination of coverage.

History: Effective February 1, 2002.

General Authority:

NDCC 43-23-19

Law Implemented:

NDCC 43-23-19

70-02-05-10. Surrender of license for failure to provide proof of insurance. When a licensee receives notice of being placed on inactive status for failure to provide proof of insurance, the licensee shall immediately surrender the license to the commission.

History: Effective February 1, 2002; amended effective January 1, 2006.

General Authority:

NDCC 43-23-19

Law Implemented:

NDCC 43-23-19

70-02-05-11. Notification required for cancellation. If insurance under equivalent coverage is to lapse or be nonrenewed, the providing company must notify the North Dakota real estate commission of its intent to lapse or nonrenew a minimum of thirty days before the expiration date of the term.

History: Effective February 1, 2002.

General Authority:

NDCC 43-23-19

Law Implemented:

NDCC 43-23-19

70-02-05-12. Proof of insurance required to activate license. A licensee whose license has been placed on inactive status for failure to provide proof of insurance may not conduct any activities for which a license is required until proof of insurance has been provided to the commission and the license has been activated. The license shall be considered active as of the effective date of the insurance.

History: Effective February 1, 2002.

General Authority:

NDCC 43-23-19

Law Implemented:

NDCC 43-23-19

70-02-05-13. Authenticity of coverage. A licensee may not willfully or knowingly cause or allow a certificate of coverage to be filed with the commission that is false, fraudulent, or misleading.

History: Effective February 1, 2002.

General Authority:

NDCC 43-23-19

Law Implemented:

NDCC 43-23-19

ARTICLE 70.5-01

REAL ESTATE TRUST ACCOUNT COMMITTEE GRANTS

Chapter

70.5-01-01

**Real Estate Trust Account Committee Grant
Procedures**

CHAPTER 70.5-01-01

REAL ESTATE TRUST ACCOUNT COMMITTEE GRANT PROCEDURES

Section

70.5-01-01-01 Definitions

70.5-01-01-02 Eligible Grant Applicants

**70.5-01-01-03 Grant Application Minimum Content and
Procedures**

70.5-01-01-04 Grant Award

70.5-01-01-05 Grantee Accounting of Funds Expended

70.5-01-01-01. Definitions. As used in this title:

1. "Committee" means the real estate trust account committee as created by North Dakota Century Code chapter 43-23.4, and its members, officers, and duly authorized agents.
2. "RETA" means the real estate trust account program created by North Dakota Century Code chapter 43-23.4, or funds deriving from that program.

History: Effective April 1, 2002.

General Authority:

NDCC 28-32-02, 43-23.4-02

Law Implemented:

NDCC 43-23.4-02

70.5-01-01-02. Eligible grant applicants.

1. The committee may advertise, solicit, or promote the submission of appropriate applications if it determines such activities are needed or appropriate. The committee may request or suggest applications from potential providers of services in priority funding areas.
2. Grant applicants must demonstrate or provide the following to be eligible for consideration by the committee:
 - a. Qualify as an exempt organization under the Internal Revenue Code, as now defined or the corresponding provision of any future amendments thereto, or otherwise demonstrate the charitable purposes of the applicant organization and project.
 - b. Fiscal responsibility and integrity.
 - c. Compliance with all material requirements of the grant application process, as determined by a majority of the committee.

History: Effective April 1, 2002.

General Authority:

NDCC 28-32-02, 43-23.4-02

Law Implemented:

NDCC 43-23.4-02

70.5-01-01-03. Grant application minimum content and procedures.

1. Grant applications should be typed or legibly printed, except for minor corrections, on forms provided by the committee or in a manner prescribed by the committee. Applications should be directed to:

Executive Director
Real Estate Trust Account Committee
318 W. Apollo Avenue
Bismarck, ND 58503

Questions and requests for forms should be addressed to the same address or directed by telephone to (701) 355-1010.
2. Applications must be signed by an official who has authority to bind the organization to the proposed obligations. Applications must state that they are valid for a minimum period of sixty days from the date of submission.
3. The applicant must state that its financial records are open to review upon request of the committee both during the grant application review process and thereafter if a grant is awarded.
4. The applicant must state that it agrees that its application, upon receipt by the committee, becomes the property of the committee. The committee reserves the right to use any ideas presented, whether or not the application is accepted for funding. All applications, once received by the committee, are open to public inspection and comment.
5. All grant applications must be submitted to the committee by October thirty-first of each year for grants effective on January first of the following year. Under special circumstances, the committee may award grants at other times during the year.
6. The committee will not be liable for any expenses incurred by any prospective grantee prior to the issuance of the grant.

History: Effective April 1, 2002.

General Authority:

NDCC 28-32-02, 43-23.4-02

Law Implemented:

NDCC 43-23.4-02

70.5-01-01-04. Grant award.

1. The committee may reject any or all applications, make inquiries regarding applications, request or suggest supplements to applications, interview any or all applicants, conduct preaward audits, and make onsite visits and inspections.
2. The following factors, among others, and only when applicable and appropriate, will be used to assist in the grant decision making process:

- a. Applications by groups or organizations shall be preferred over those of individuals.
 - b. Applications involving challenge grants, or other types of fund-matching arrangements to leverage RETA money shall be preferred.
 - c. Grant applicants with present or future sources of income other than RETA, or who can otherwise demonstrate an eventual ability to function without the assistance of the committee shall be preferred, although replacing stable funding sources with RETA funds shall not be preferred.
 - d. Grant applicants demonstrating a history of delivering quality services successfully shall be preferred.
 - e. Grant applicants including a reasonable plan to develop cooperative efforts between grantees in a given service area shall be preferred.
 - f. Grant applicants demonstrating community support shall be preferred.
 - g. Grant applicants including a reasonable plan to achieve broad geographic and demographic distribution of RETA funds throughout the state shall be preferred.
 - h. Grant applicants primarily funded by governmental appropriations shall not be preferred and funding shall not be granted to state agencies to perform statutory duties.
 - i. Applications for seed money to establish new programs which contribute to increased availability of housing for the poor or will provide increased education about the needs of housing for the poor shall be especially preferred.
 - j. The committee shall not fund political campaigns, lobbying, or legislative advocacy with RETA funds.
3. The committee shall not disburse any funds until the grantee enters into a written contract in the form established by the committee. The contract may require any periodic written reports.
 4. In any one grant year the committee may make available up to ninety percent of its total funds, after operating costs.
 5. The committee may waive technicalities or irregularities in applications, or alternatively, find an error or omission to be material, by majority vote.

History: Effective April 1, 2002.

General Authority:

NDCC 28-32-02, 43-23.4-02

Law Implemented:

NDCC 43-23.4-02

70.5-01-01-05. Grantee accounting of funds expended. The grantee shall keep an accurate account of all RETA funds received, expended, and remaining that can be distinguished from the grantee's other financial affairs. At a minimum, the grantee shall record the recipient, amount, date, and general purpose of each expenditure, in addition to any specific requirements of the grant contract. Upon request of the committee, the grantee shall give further information about or explanation of any expenditure. Failure to provide reasonable information or explanations shall subject the grantee to repayment of the amount in question to the committee.

The grantee shall give the committee access to the grantee's books, documents, papers, and records that bear any reasonable relationship to the grant.

History: Effective April 1, 2002.

General Authority:

NDCC 28-32-02, 43-23.4-02

Law Implemented:

NDCC 43-23.4-02

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This booklet contains the current statutes and administrative rules as of the publication date. For illustrative purposes, the most recent changes and amendments to these laws and rules are indicated by the following:

Text marked with underline indicates a law or rule has been added:

~~Text marked with strike through indicates a law or rule has been removed.~~

This booklet is published by the North Dakota Real Estate Commission and contains the North Dakota Real Estate License Law and Administrative Code governing the conduct of all real estate licensees.