



**North Dakota Real Estate Commission**  
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**Testimony in favor of Engrossed House Bill 1258 – updates to real estate license law**

**By Jeanne Prom, Executive Director, [jeprom@nd.gov](mailto:jeprom@nd.gov) 328.9737**  
**North Dakota Real Estate Commission**

**Senate Industry, Business and Labor Committee**  
**Senator Jerry Klein, Chair**  
**9:45 a.m., March 3, 2021**

Good morning, Chairman Klein and members of the Senate Industry, Business and Labor Committee. I am Jeanne Prom, executive director of the North Dakota Real Estate Commission. The Governor-appointed five-member commission serves to protect the public by licensing and setting standards for real estate licensees through NDCC Chapter 43-23, the real estate license law.

**The N.D. Real Estate Commission urges a Do Pass recommendation on Engrossed House Bill 1258. HB 1258 updates NDCC 43-23, the real estate license law.**

**Review of NDCC 43-23**

Over the past year, the N.D. Real Estate Commission, in their regular open meetings, reviewed NDCC Chapter 43-23 with the N.D. Association of REALTORS® and others. HB 1258 is result of this review.

The commission was very committed to an open, inclusive, and thorough review of the entire license law and its rules in NDCC Chapter 70. The intent of the line-by-line public review was to assure the consumer continues to be protected, which is the commission's legal charge. The intent also was to identify how to modernize and clarify the law by eliminating language no longer needed, and to add language to include, for example, electronic methods of doing business.

The changes are not sweeping changes expanding the authority of the commission or the scope of real estate practice. The changes are updates to existing law and summarized on the next pages.

Members of the North Dakota Real Estate Commission are: Sandra Meyer, Chair; Steven Bitz, Vice Chair; members: Steven Link, Tate Cymbaluk, Scott Breidenbach. Special Assistant Attorney General: Connie Hofland. Staff: Jeanne Prom, executive director.

## Summary of proposed changes to NDCC 43-23

### Modernizing – 12 changes

**Removing language no longer necessary** – adopting our own seal, requiring commission to meet in their office, outdated education terms, nonresident applicants' state of residence must offer same privileges and licenses to our licensees, referencing the national association code of ethics.

**Removing language that does not reflect electronic methods used now** – applications must be in writing on forms, licensee list mailed.

**Adding or changing language to allow electronic or other updated methods** – licensees listed on broker and commission websites, shortened timelines for documents submitted electronically.

**Removing “employ,” “employment,” and “employer”** – most licensees are independent contractors.

**Removing real estate trust account committee and requirement that trust accounts are interest-bearing** – significant amount of earnest money submitted to title companies.

**Removing old dates– 8 dates** -- effective dates that are in the past.

### Clarifying – 8 changes

**Eliminating duplicative or inexact language** – removing duplicative “salesperson” reference in language about firm licensing, remove requirement about tests on courses for continuing education.

**Adding language** -- referencing 43-23-10, non-resident broker's place of business, brokers must notify commission in writing of licensee's termination, earnest money submitted to title company must be tracked, “research and recovery” before “fund.”

**Updating language** – the prohibited discrimination language changed to match N.D. Human Rights Act, transferred license issued to a new broker.

### Changing dollar amounts – 2 changes

Changes in compensation language from specific \$50 amount to not to exceed daily legislative rate, upper limit of fines raised from \$2,500 to \$5,000.

### Changing deadline – 1 change

Changes from March 1 to January 15 deadline when a late license renewal can be submitted.

### Changing subdivided lands act -- 1 change

Change to require that the commission go to the courts if an emergency temporary cease and desist order is needed to stop violations of the subdivided lands act chapter.

### Changing words – nearly every page

The Legislative Council added word changes to align with style standards, but the rewording does not otherwise change the law.

**The N.D. Real Estate Commission urges a Do Pass recommendation on Engrossed HB 1258 as passed by the House 91-0.** Thank you, Chairman Klein and members of the Senate Industry, Business and Labor Committee for your consideration of these updates to NDCC 43-23. Thanks to Rep. Louser, Senator Doug Larson, and other co-sponsors for this legislation. All co-sponsors also are real estate licensees, former licensees or otherwise associated with the business. The commission also thanks the ND Association of REALTORS® and licensees for their significant work on this review.

The attached table provides specifics on the proposed changes for your reference. I am available for your questions now or at [jeprom@nd.gov](mailto:jeprom@nd.gov) or 328.9737.

Page	Lines	Proposed amendments to NDCC 43-23 in HB 1258	Purpose	Section
1	20-23	Removing language no longer necessary – adopting our own seal. (Commission uses State Seal.)	modernizing	1
2	15-16	Removing language no longer necessary – that commission must meet in its office. (Commission has authority to meet other places.)	modernizing	2
2	22-25	Changing dollar amount language – for commission compensation from specific \$50 to language setting upper limit not to exceed daily compensation rate of member of legislative assembly, and is determined by commission at annual budget meeting. (Updates dollar amount language from 1981.)	changing dollar amount	3
3	9	Removing duplicative salesperson language in line 9. (Salesperson language is already in lines 10-11.)	clarifying	4
3	27-28	Removing old date – Removes effective date from the past. (Does not change the two-year salesperson experience requirement to apply to be a broker.)	removing old date	5
4	1-2	Removing old date – Removes effective date from the past. (Does not change the requirement for broker applicants to have substantially equivalent experience to two years as a salesperson.)	removing old date	5
5	4-12	Removing language no longer necessary – Removes outdated terms and extra language with “education.” (Education still required, but unnecessary terms and explanations are removed.)	modernizing	6
5	8-9	Removing inexact language -- about requirement about testing on continuing education courses. (Continuing education credit can be earned without passing a course test.)	clarifying	6
5	27	Removing language that does not reflect electronic methods used now – about applications required to “be in writing upon blanks prepared by the commission.”	modernizing	7
6	3-4, 8	Removing language no longer necessary -- about nonresident applicants’ state of residence must offer same privileges and licenses to our licensees. (Commission has authority under NDCC 43-23 to approve nonresident applicants if this is not met.)	modernizing	8
8	4-6	Updating language – about prohibited discrimination to match N.D. Human Rights Act.	clarifying	9
8	27-28	Removing reference to national association code of ethics. (National association code of ethics is enforced by the association, and was never adopted into NDCC 43-23 as similar standards exist in NDCC 43-23.)	modernizing	9

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<b>Page</b>	<b>Lines</b>	<b>Proposed amendments to NDCC 43-23 in HB 1258</b>	<b>Purpose</b>	<b>Section</b>
10	21-22	Changing dollar amount – upper limit of fines raised from \$2,500 to \$5,000.	changing dollar amount	9
10	31	Adding language referring to 43-23-10, nonresident broker’s place of business.	clarifying	10
11	1-2, 12, 14, 18, 20-21, 24	Removing “employ,” “employment,” and “employer” – most licensees are independent contractors. (Also p. 10, line 27, heading.)	modernizing	10
11	2-3	Adding or changing language that reflects electronic or other methods used now – licenses can be listed on broker website.	modernizing	10
11	7, 12, 21, 25	Adding or changing language that reflects electronic or other methods used now – shortened timelines since documentation is now submitted electronically and no license needs to be returned.	modernizing	10
11	22	Clarifies that a broker must notify the commission in writing of a licensee’s termination.	clarifying	10
11	26	Updating by adding language --- to clarify that a transferred license is issued to the new broker.	clarifying	10
12	7-8,10	Changing from March 1 to January 15 the deadline when a late license renewal can be submitted – two places in same section.	changing deadline	11
12	22, 27-30	Changing trust accounts from interest-bearing to non-interest bearing – significant amount of earnest money submitted to title companies.	modernizing	12
13	13-15	Adding language to require that earnest money deposited directly with the title company and not the broker’s trust account needs to be tracked.	clarifying	12
13	19, 22-25	Adding and removing language to reflect maintaining a list of licensees online and publishing list.	modernizing	13
13	31	Removing old date – Removes effective date from the past.	removing old date	14
14 15	24-31 1-3	Change in subdivided lands act -- to require that the commission go to the courts if an emergency temporary cease and desist order is needed to stop violations of the subdivided lands act chapter. Other changes on page 14, lines 5-8 and 20-22 show language that was moved by Legislative Council but does not change the law.	changing subdivided lands act	15

<b>Page</b>	<b>Lines</b>	<b>Proposed amendments to NDCC 43-23 in HB 1258</b>	<b>Purpose</b>	<b>Section</b>
15	8-14, 18-19	Removing old dates – Removes effective dates from the past.	removing old dates	16
15	16	Adding “education, research and recovery” to clarify.	clarifying	16
16	25	Removing old date – Removes effective date from the past.	removing old dates	17
17	3	Removing real estate trust account committee – Removes committee set up to manage interest from trust accounts. Committee not needed as a significant amount of earnest money is submitted to title companies and does not accrue interest, and this bill proposes making trust accounts non-interest bearing.	modernizing	18

**Sixty-seventh Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 5, 2021**

HOUSE BILL NO. 1258  
(Representatives Louser, Adams, Boschee, Mock, Roers Jones, Steiner, Vetter)  
(Senators D. Larsen, Meyer, J. Roers)

AN ACT to amend and reenact sections 43-23-02, 43-23-03, 43-23-04, 43-23-05, 43-23-08, 43-23-08.2, 43-23-09, 43-23-10, 43-23-11.1, 43-23-12, 43-23-13.1, 43-23-14.1, 43-23-16, 43-23-19, 43-23.1-14, 43-23.2-02, and 43-23.2-03 of the North Dakota Century Code, relating to real estate commission administration and real estate licensing; to repeal chapter 43-23.4 of the North Dakota Century Code, relating to real estate broker trust accounts; and to provide a penalty.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Section 43-23-02 of the North Dakota Century Code is amended and reenacted as follows:

**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. A commissioner may not serve more than two consecutive five-year terms. 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.~~

**SECTION 2. AMENDMENT.** Section 43-23-03 of the North Dakota Century Code is amended and reenacted as follows:

**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 and who is~~ shall be custodian of all moneys received for licenses which ~~must, by the executive director, be deposited~~ shall deposit for safekeeping in depositories designated by the commission. The executive director ~~must be~~ is the custodian of all records of the commission and ~~shall~~ shall perform such other duties as the commission may require. The commission ~~is authorized to~~ may 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.

**SECTION 3. AMENDMENT.** Section 43-23-04 of the North Dakota Century Code is amended and reenacted as follows:

**43-23-04. Commission - Compensation.**

The members of the commission ~~shall be entitled to receive fifty dollars per diem, not to exceed the daily compensation rate a member of the legislative assembly is entitled to receive under section 54-35-10 for attendance at a legislative management committee meeting, as determined by the commission in the annual budget process,~~ 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.

**SECTION 4. AMENDMENT.** Section 43-23-05 of the North Dakota Century Code is amended and reenacted as follows:

**43-23-05. Real estate license required.**

~~No~~ A person may not act as a real estate broker or real estate salesperson, or advertise or assume to act as such a real estate broker or real estate salesperson, without a license issued by the real estate commission. ~~No~~ A person is not 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~~ A copartnership, association, corporation, or limited liability company may not 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~~ the copartnership, association, corporation, or limited liability company holds a license as a real estate salesperson.

**SECTION 5. AMENDMENT.** Section 43-23-08 of the North Dakota Century Code is amended and reenacted as follows:

**43-23-08. License standards.**

1. Licenses and ~~the~~ license 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~~ before the 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~~ Must have been actively engaged as a licensed real estate salesperson for a period of at least ~~one year~~ two years preceding the date of application, ~~which, beginning July 1, 1979, is increased to two years;~~ or
  - b. ~~Shall~~ Must 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 ninety 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~~ by which 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.

**SECTION 6. AMENDMENT.** Section 43-23-08.2 of the North Dakota Century Code is amended and reenacted as follows:

**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 education courses that qualify for satisfaction of this requirement, and shall maintain a current list of ~~lectures, seminars, courses of instruction, and correspondence education~~ 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 education 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.

**SECTION 7. AMENDMENT.** Section 43-23-09 of the North Dakota Century Code is amended and reenacted as follows:

**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.

**SECTION 8. AMENDMENT.** Section 43-23-10 of the North Dakota Century Code is amended and reenacted as follows:

**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~~another 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 ~~sueh~~the 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~~the consent stipulating and agreeing ~~that such~~ service of ~~sueh~~the 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~~the 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~~the process or pleading is directed, and no default in ~~any sueh~~the proceedings or action may be taken except upon affidavit or certificate of the commission or the executive director, that a copy of ~~said~~the process or pleading was mailed to the defendant as ~~herein~~ required under this section, and ~~no~~ judgment by default may not be taken in any such action or proceeding until after thirty days from the date of mailing of ~~sueh~~the process or pleading to the nonresident defendant.

**SECTION 9. AMENDMENT.** Section 43-23-11.1 of the North Dakota Century Code is amended and reenacted as follows:

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

1. The commission upon its own motion may investigate, and upon the verified complaint in writing of any person, shall, ~~investigate~~ the activities of any licensee or any person ~~who~~that 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~~if 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~~Failing 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~~Being convicted or ~~pleaded~~pleading 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~~the 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, religion, sex, age, physical or mental disability, or status with respect to marriage or public assistance 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~~to the document.
- l. Paying compensation or commission in connection with any real estate sale, lease, or other transaction to any person ~~who~~that 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~~that has been listed with the licensee's office for sale or lease.
- n. ~~Failure~~Failing to include a fixed date of expiration in any written listing agreement and ~~failure~~failing to leave a copy of ~~such~~the agreement with the principal.
- o. ~~Failure by a~~A broker failing 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~~the transaction is consummated, showing all of the receipts and disbursements handled by ~~such~~the broker for the party or parties represented by the broker, and to retain true copies of ~~such~~the statements in the broker's files.
- p. Violating any provisions of this chapter or rule or regulation ~~promulgated~~adopted 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.r. 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.s. ~~Failure of a~~A salesperson failing to place with that ~~person's~~salesperson'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~~the 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~~before a holiday or on another day ~~prior to~~before 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.t. ~~Failure of the~~The licensee failing to reduce an offer to writing when a proposed purchaser requests ~~that such~~the offer be submitted to the seller, or failure of the licensee to submit all offers to a seller when ~~such~~the offers are received ~~prior to~~before the seller accepting an offer in writing and until the broker has knowledge of ~~such~~the acceptance.
  - v.u. 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.v. Any conduct ~~which~~that 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~~the commission, ~~it~~the commission immediately shall ~~immediately~~ give notice of that fact to the applicant, and upon request from ~~such~~the applicant, filed within twenty days after the receipt of ~~such~~the notice, shall fix a time and place for hearing, of which twenty days' notice must be given to ~~such~~the 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~~must be licensed, or ~~it~~the commission may sustain ~~it~~the commission's 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~~five thousand 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.

**SECTION 10. AMENDMENT.** Section 43-23-12 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Every ~~person~~individual, 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, except as provided in section 43-23-10. ~~The certificate of registration~~license as broker and the ~~certificate~~license of each real estate salesperson ~~employed by such~~licensed under that broker must be prominently displayed in said office or the licensee's name and license number listed on the broker's website. ~~The said~~ place of business must be designated in the license, and ~~no~~ license issued under the authority of this chapter may not authorize the licensee to transact business ~~at any other address~~under any other broker. In case of removal from the designated ~~address~~broker, the licensee shall make application to the commission before ~~said~~the removal or within ~~ten~~five days after ~~said~~the removal, designating the new location of such office, whereupon the commission immediately shall ~~forthwith~~ issue a new license for the new location for the unexpired period. The broker's home may qualify as ~~such~~the place of business.
2. All licenses issued to real estate salespersons ~~shall~~must designate the ~~employer~~broker of ~~such~~the salespersons. Prompt notice in writing, within ~~ten~~five days, must be given to the commission by any real estate salesperson of a change of ~~employer~~broker, and of the name of the licensed broker into whose ~~employ~~supervision the salesperson is about to enter, and a new license ~~shall thereupon~~must be issued by the commission to ~~such~~the 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~~broker by any licensed real estate salesperson, without notice to the commission ~~as aforesaid~~, shall automatically ~~cancel~~cancel that person's license. Upon termination of a real estate salesperson's ~~employment~~supervision by a broker, the broker ~~employer~~immediately shall ~~forthwith~~ return ~~the salesperson's license~~ ~~to~~notify the commission ~~for cancellation~~in writing. 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~~supervision by a broker has been terminated ~~and license as a salesperson has been returned for cancellation~~, until ~~said~~the license has been reissued by the commission to a new broker.

**SECTION 11. AMENDMENT.** Section 43-23-13.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-23-13.1. License renewal.**

Every person licensed to practice as a real estate broker or real estate salesperson ~~must~~shall 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~~must be submitted to the commission with the appropriate fee no later than the application deadline set by the commission. A licensee ~~who~~that 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 January fifteenth 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~~of a month after the application deadline. Any license not renewed by ~~March~~first January fifteenth must be canceled. The cancellation must be performed without any notice or opportunity for hearing. Any person whose license has been canceled and ~~who~~which 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~~A licensee may not 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.

**SECTION 12. AMENDMENT.** Section 43-23-14.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-23-14.1. Handling of funds by brokers.**

Except as otherwise provided in this section, every broker ~~shall~~, at all times, shall maintain in the broker's name or firm name, a separate, noninterest-bearing trust account designated as such in a federally insured financial institution in this state in which the broker ~~shall~~ immediately shall 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~~the commission's duly authorized agents at all times during regular business hours at the broker's usual place of business.

A broker ~~who~~that does not accept trust funds in real estate brokerage transactions and ~~whewhich~~ 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. A broker shall maintain a record tracking the earnest money associated with all transactions even if the funds are deposited directly with the title company and the broker does not take possession of the funds.

**SECTION 13. AMENDMENT.** Section 43-23-16 of the North Dakota Century Code is amended and reenacted as follows:

**43-23-16. Licensee list.**

The executive director shall ~~publish, at least annually,~~maintain a list online 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.~~

**SECTION 14. AMENDMENT.** Section 43-23-19 of the North Dakota Century Code is amended and reenacted as follows:

**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 ~~whewhich~~ hold inactive licenses, carry errors and omissions insurance covering all activities contemplated under this chapter.

**SECTION 15. AMENDMENT.** Section 43-23.1-14 of the North Dakota Century Code is amended and reenacted as follows:

**43-23.1-14. Cease and desist ordersOrders.**

1. ~~If~~The commission may issue an order requiring a 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 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~~after the order of registration without obtaining prior written approval from the commission;
  - d. Disposed of any subdivided lands ~~which~~that 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, ~~if~~the commission 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 permanentcommence an action in the district court of the county in which the act or practice occurred for an injunction to enforce compliance with this chapter. The commission is not required to give any bond for commencing this action. Upon a showing of a violation the district court may enjoin the act or practice and may make any order necessary to conserve, protect, and disburse any funds involved.

**SECTION 16. AMENDMENT.** Section 43-23.2-02 of the North Dakota Century Code is amended and reenacted as follows:

**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~~the license which must be credited into the education, research, and recovery 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~~person'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~~the 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~~that are processed through the commission by means of the procedures established in this chapter.
4. The commission, in ~~its~~the commission's discretion, may use any moneys in the fund in excess of sixty thousand dollars, regardless of whether ~~it~~the excess 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.

**SECTION 17. AMENDMENT.** Section 43-23.2-03 of the North Dakota Century Code is amended and reenacted as follows:

**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.

**SECTION 18. REPEAL.** Chapter 43-23.4 of the North Dakota Century Code is repealed.

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Chief Clerk of the House

\_\_\_\_\_  
Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-seventh Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1258.

House Vote:    Yeas 91            Nays 0            Absent 3

Senate Vote:    Yeas 47            Nays 0            Absent 0

\_\_\_\_\_  
Chief Clerk of the House

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2021.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2021.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2021,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State