

**CHAPTER 43-23**  
**STATE REAL ESTATE COMMISSION**

**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. 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.

**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, and who is custodian of all moneys received for licenses which the executive director, shall deposit for safekeeping in depositories designated by the commission. The executive director is the custodian of all records of the commission and shall perform such other duties as the commission may require. The commission may fix the salary of the executive director, employ other employees as may be necessary to properly carry out the provisions of this chapter, fix salaries and prescribe duties of employees, and make other expenditures as 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 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 are entitled to receive 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 to 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.**

A person may not act as a real estate broker or real estate salesperson, or advertise or assume to act as a real estate broker or real estate salesperson, without a license issued by the real estate commission. 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. 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, holds a license as a real estate broker, and unless every employee who acts as a real estate salesperson for the copartnership, association, corporation, or limited liability company holds a license as a real estate salesperson.

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

1. The commission may license an organization of a salesperson, broker, or broker associate if:
  - a. The organization is owned solely by an individual who is licensed as a salesperson, broker, or broker associate, or by that individual and that individual's spouse, or by that individual and other salespersons, brokers, 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 the organization is a real estate broker or real estate brokerage firm.
2. The employing or associating broker of a salesperson, broker, or broker associate who is part of an organization is not relieved of any obligation to supervise the employed or associated salesperson, broker, 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, broker, 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 6 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 license renewals 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 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. Must have been actively engaged as a licensed real estate salesperson for a period of at least two years preceding the date of application; or
  - b. 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 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 an applicant could not acquire employment as a licensed real estate salesperson because of conditions existing in the area where the salesperson resides, 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 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.

#### **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 education courses that qualify for satisfaction of this requirement, and shall maintain a current list of education courses so approved. Attendance at a course or the completion of an 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.

#### **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 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 another 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, the nonresident broker has qualified for license in the broker's own state. Every nonresident applicant shall file an irrevocable consent that suits and actions may be commenced against 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, the consent stipulating and agreeing service of the process or pleading is taken and held in all courts to be as valid and binding as if due service had been made upon 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 the process or pleading is directed, and no default in the proceedings or action may be taken except upon affidavit or certificate of the commission or the executive director, that a copy of the process or pleading was mailed to the defendant as required under this section, and judgment by default may not be taken in any such action or proceeding until after thirty days from the date of mailing of the 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 investigate, and upon the verified complaint in writing of any person, shall investigate the activities of any licensee or any person 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, 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. 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. Being convicted or 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 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, 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 to the document.
  - l. Paying compensation or commission in connection with any real estate sale, lease, or other transaction to any person 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 that has been listed with the licensee's office for sale or lease.

- n. Failing to include a fixed date of expiration in any written listing agreement and failing to leave a copy of the agreement with the principal.
  - o. 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 the transaction is consummated, showing all of the receipts and disbursements handled by the broker for the party or parties represented by the broker, and to retain true copies of the statements in the broker's files.
  - p. Violating any provisions of this chapter or rule or regulation adopted by the commission.
  - q. 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.
  - 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.
  - s. A salesperson failing to place with that 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 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 before a holiday or on another day 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.
  - t. The licensee failing to reduce an offer to writing when a proposed purchaser requests the offer be submitted to the seller, or failure of the licensee to submit all offers to a seller when the offers are received before the seller accepting an offer in writing and until the broker has knowledge of the acceptance.
  - 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.
  - v. Any conduct 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 the commission, the commission immediately shall give notice of that fact to the applicant, and upon request from the applicant, filed within twenty days after the receipt of the notice, shall fix a time and place for hearing, of which twenty days' notice must be given to 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 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 must be licensed, or the commission may sustain 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 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.

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

1. Every 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 license as broker and the license of each real estate salesperson 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 place of business must be designated in the license, and a license issued under the authority of this chapter may not authorize the licensee to transact business under any other broker. In case of removal from the designated broker, the licensee shall make application to the commission before the removal or within five days after the removal, designating the new location of such office, whereupon the commission immediately shall issue a new license for the new location for the unexpired period. The broker's home may qualify as the place of business.
2. All licenses issued to real estate salespersons must designate the broker of the salespersons. Prompt notice in writing, within five days, must be given to the commission by any real estate salesperson of a change of broker, and of the name of the licensed broker into whose supervision the salesperson is about to enter, and a new license must be issued by the commission to the salesperson for the unexpired term of the original license, upon the return to the commission of the license previously issued. The change of broker by any licensed real estate salesperson, without notice to the commission, automatically cancels that person's license. Upon termination of a real estate salesperson's supervision by a broker, the broker immediately shall notify the commission 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 supervision by a broker has been terminated, until the license has been reissued by the commission to a new broker.

**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 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 must be submitted to the commission with the appropriate fee no later than the application deadline set by the commission. A licensee 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 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 of a month after the application deadline. Any license not renewed by 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 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.

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.

#### **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, 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 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. A broker may not commingle the broker's personal funds or other funds in a trust account, except 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 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 the commission's duly authorized agents at all times during regular business hours at the broker's usual place of business.

A broker that does not accept trust funds in real estate brokerage transactions and which 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.

##### **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 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.

##### **43-23-17. Penalty.**

Any person violating section 43-23-05 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 all real estate salespersons and brokers, except those which 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**

**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. Orders.**

1. 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 after the order of registration without obtaining prior written approval from the commission;
  - d. Disposed of any subdivided lands that have not been registered with the commission; or
  - e. Violated any lawful order or rule or regulation of the commission.
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, the commission may commence 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.

#### **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**

**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, any person licensed as a real estate broker or salesperson for the first time, shall pay a fee of twenty dollars at the time of obtaining 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, 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 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 the investments must be deposited to the credit of the fund. Sufficient liquidity must be maintained so moneys are available to satisfy all claims that are processed through the commission by means of the procedures established in this chapter.
4. The commission, in the commission's discretion, may use any moneys in the fund in excess of sixty thousand dollars, regardless of whether 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.

**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, 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 47-10**  
**REAL PROPERTY TRANSFERS**

**47-10-02.1. Property disclosure - Requirements - Exceptions.**

1. Unless the transaction is exempted under subsection 7, this section applies to a transaction for the sale, exchange, or purchase of real property if:
  - a. A real estate broker, real estate broker associate, or real estate salesperson who is associated with a real estate brokerage firm represents or assists a party to the transaction; and
  - b. The real property is a residential dwelling with no more than four units located in this state being sold or exchanged by the owner.
2. Except as otherwise provided in an offer to purchase agreement, before the parties sign the final acceptance of the purchase agreement for the sale, exchange, or purchase of the real property, the seller in a transaction subject to subsection 1 shall prepare a written disclosure form and shall make the written disclosure form available to the prospective buyer. The written disclosure form must include all material facts the seller is aware could adversely and significantly affect an ordinary buyer's use and enjoyment of the property or any intended use of the property of which the seller is aware. The written disclosure form must be in the form of the written disclosure form established by the North Dakota real estate commission under subsection 4 or in a substantially similar form and must include latent defects, general condition, environmental issues, structural systems, and mechanical issues regarding the property. The seller shall complete the written disclosure in good faith and based upon the best of the seller's knowledge at the time of the disclosure.
3. If a real estate broker, real estate broker associate, or real estate salesperson who is associated with a real estate brokerage firm represents or assists a party to the transaction, following the sale, exchange, or purchase of real property, the brokerage firm shall retain a copy of the written disclosure completed and signed by the seller and signed by the prospective buyer. The brokerage firm's duties under this section do not supersede any other common law or statutory duties.
4. The North Dakota real estate commission shall establish and make available a written disclosure form meeting the requirements of this section. In establishing the form, the commission shall consult with stakeholders, such as professional organizations.
5. If a real estate broker, real estate broker associate, or real estate salesperson who is associated with a real estate brokerage firm violates this section, the state real estate commission may investigate and take disciplinary action under section 43-23-11.1.
6. Unless the transaction is subject to subsection 1 or exempted under subsection 7, the seller of real property that is a residential dwelling with no more than four units located in this state being sold or exchanged by the owner shall comply with the provisions of this subsection. Except as otherwise provided in an offer to purchase agreement, before the parties sign the final acceptance of the purchase agreement for the sale, exchange, or purchase of the real property, the seller in a transaction subject to this subsection shall disclose to the buyer, in writing, all material facts the seller is aware could adversely and significantly affect an ordinary buyer's use and enjoyment of the

property or any intended use of the property of which the seller is aware. The written disclosure may be in the form of a written property disclosure form.

7. This section does not apply to transactions for the sale, exchange, or purchase of real property made:
  - a. Pursuant to a court order;
  - b. Between government agencies;
  - c. By a mortgagor in default to a mortgagee;
  - d. Pursuant to a foreclosure sale;
  - e. By a mortgagee or a beneficiary of a deed of trust who acquired the real property by a:
    - (1) Foreclosure;
    - (2) Deed in lieu of foreclosure; or
    - (3) Collateral assignment of beneficial interest;
  - f. By a fiduciary administering a decedent's estate, guardianship, conservatorship, or trust;
  - g. Between co-owners of the real property;
  - h. To a spouse, child, parent, sibling, grandchild, or grandparent; or
  - i. If the real property is newly constructed residential real property with no previous occupancy.

**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

**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.

**History:** Amended effective July 1, 2006; April 1, 2008; July 1, 2022.

**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 chair of the commission.

**History:** Amended effective July 1, 2022.

**General Authority:** NDCC 28-32-02, 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 discipline a licensee 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; July 1, 2022.

**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 Release of License Due to Cancellation, Transfer, Suspension, or Revocation
70-02-01-08	Salesperson and Broker Associate 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 of ethics and practices by all real estate licensees doing business in North Dakota.

**History:** Amended effective January 1, 1992; July 1, 2022.

**General Authority:** NDCC 28-32-02, 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 submitted.
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.
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 real estate license suspended or revoked in North Dakota or another state.
  - e. 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.
  - f. 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 for a salesperson, broker associate, or broker pursuant to North Dakota Century Code section 43-23-05.1 must be accompanied by a one-time license fee of not more than three 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 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; July 1, 2022.

**General Authority:** NDCC 28-32-02, 43-23-08(6)

**Law Implemented:** 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 examination until and unless the applicant has been authorized in writing to take the examination.
2. If an applicant should fail to take the examination within four months after notification by the commission that the applicant is qualified to take the examination, an applicant must submit a new application together with fees.
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 with 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.
6. A prelicensure course is valid for two years from the date the applicant completed the course, as indicated on the certificate of completion or other official documentation provided by the school.

**History:** Amended effective January 1, 1992; February 1, 2004; April 1, 2008; July 1, 2022.

**General Authority:** NDCC 28-32-02, 43-23-08, 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 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 submit a new application with the fees and pass the examinations to be licensed again. No license renewal fees are refunded after the beginning of the new license year if a licensee cancels their license or is deceased.

**History:** Amended effective October 1, 2015; July 1, 2022.

**General Authority:** NDCC 43-23-08, 43-23-08.2, 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 a request from the salesperson in a format prescribed by the commission 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. The salesperson placing the salesperson's license on inactive status shall pay the required fee for renewing 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 desires to place the broker's license on an inactive status may do so in a format prescribed by the commission that requests the license be placed on an inactive status. The broker may keep the broker's license on an inactive status for an indefinite period. The broker placing the broker's license on inactive status shall pay the required fee for renewing 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. While a license is on inactive status, in the case of a designated broker, the firm license is automatically canceled unless another broker is the designated broker. A firm license that is canceled may be activated only by submitting a firm license application with all fees.
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; July 1, 2022.

**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 principal place of business 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 principal place of business. 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. Prelicensure course is not required if the applicant is already licensed in another nonreciprocal state.

**History:** Amended effective May 1, 1986; January 1, 1992; April 1, 2008; October 1, 2015; July 1, 2022.

**General Authority:** NDCC 28-32-02, 43-23-08(6)

**Law Implemented:** NDCC 43-23-10

**70-02-01-07. Licensee's duties upon release of license due to cancellation, transfer, suspension, or revocation.**

Upon release of license or upon notice of suspension, revocation, or cancellation of the license, the designated broker shall destroy the license and remove the licensee's name and licensee's number from the broker's website. If the license is that of a broker, the broker shall also release all licensees associated with the broker. No refund will be made upon any license when released.

**History:** Amended effective January 1, 1992; February 1, 2004; July 1, 2022.

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

**Law Implemented:** NDCC 43-23-11.1

**70-02-01-08. Salesperson and broker associate transfer or release.**

When for any reason a licensee severs connection with the licensee's designated broker and desires to transfer to another broker, the licensee must complete a transfer and release form provided by the commission, to be executed by the licensee, the licensee's current broker, and the licensee's new broker. Should the licensee's current broker not be agreeable to the transfer or release, the current 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; July 1, 2022.

**General Authority:** NDCC 28-32-02, 43-23-08, 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 who does not have an office under the broker's own name, but is affiliated with another licensed broker 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 supervising broker. The designated broker shall at all times be responsible for the action of the affiliated broker associate to the same extent as though the affiliated broker were an affiliated salesperson.

**History:** Amended effective January 1, 1992; July 1, 2022.

**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 broker receives notification of licensure from the commission. Any licensee leaving a broker shall not take nor use any agreements secured through the office or through licensees of the former broker unless specifically authorized by the former 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; July 1, 2022.

**General Authority:** NDCC 28-32-02, 43-23-08, 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 five 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 or listed on the broker's website, 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; July 1, 2022.

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

**Law Implemented:** NDCC 43-23-12, 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 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; July 1, 2022.

**General Authority:** NDCC 28-32-02, 43-23-08, 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 a federally insured 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. Name of account. The name of such separate account shall be identified by the words "trust account" or "escrow account".
  - b. 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 new form shall be filed with the commission each time a broker changes the real estate trust account in any manner whatsoever, including 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.

- c. 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.
  - d. 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.
  - e. Number of accounts. A broker may maintain more than one trust account provided the commission is advised of the account.
  - f. 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. If the trust money is wired by the buyer to either the broker's trust account or a nonbroker third party, the broker shall maintain in the broker's office a complete record of all moneys transferred, including the initial contact request for the wire from the buyer to their financial institution, and confirmation of completion of the transfer. If earnest money is mailed by the buyer to the broker or the nonbroker third party, the envelope containing the postmark must be retained by the broker to establish the date the money was sent.
  - g. Responsibility. When a broker is registered in the office of the real estate commission as in the employ of another broker, the responsibility for the maintenance of a separate account shall be the responsibility of the employing broker.
  - h. Noninterest bearing accounts. All trust accounts must be noninterest bearing.
2. Brokers are responsible at all times for deposits and earnest money accepted by them or their salespersons.
- a. Personal payments. No payments of personal indebtedness of the broker shall be made from the trust account other than a withdrawal of earned commissions payable to the broker or withdrawals made on behalf of the beneficiaries of the trust account.
  - b. Withdrawals. Money held in the trust account which is due and payable to the broker should be withdrawn promptly.
  - 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.
  - d. Abandoned deposits. Abandoned deposits in a broker's trust account are subject to the laws governing abandoned property as provided in North Dakota Century Code chapter

47-30.1. A deposit that has remained unclaimed for more than three years after it became payable or distributable is presumed abandoned by North Dakota Century Code chapter 47-30.1 and must be reported and delivered to the administrator of the unclaimed property division as provided by North Dakota Century Code chapter 47-30.1. Earnest money deposits are considered payable or distributable as of the closing date on the purchase agreement or date of cancellation of the purchase agreement.

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:
  - a. Bank deposit slips. A bank deposit slip showing the date of deposit, amount, source of the money, and where deposited.
  - b. Bank statements. Monthly bank statements are to be retained and kept on file.
  - c. Trust account checks. Trust account checks should be numbered and all voided checks retained. The checks should denote the broker's business name, address, and should be designated as "real estate trust account".
  - d. Journal. A journal which shows the chronological sequence in which funds are received and disbursed:
    - (1) For funds received, the journal must include the date, the name of the party who is giving the money, the property address, and the amount.
    - (2) For disbursements, the journal must include the date, the payee, and the amount.
    - (3) 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; January 1, 2016; July 1, 2022.

**General Authority:** NDCC 28-32-02, 43-23-14.1

**Law Implemented:** NDCC 43-23-11.1(1), 43-23-14.1

#### **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 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 has been filed must, within twenty days from receipt of complaint, file the licensee's answer on forms furnished by the commission. This answer must be in affidavit form, 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 or rules, the complaint shall be dismissed without a formal hearing, and the complainant and respondent 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; July 1, 2022.

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

**Law Implemented:** NDCC 43-23-11.1

#### **70-02-01-17. Disputes between licensees.**

The commission is not authorized by law nor will it consider or conduct hearings involving disputes over fees or commissions between licensees.

**History:** Amended effective January 1, 1992; July 1, 2022.

**General Authority:** NDCC 28-32-02, 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. The designated broker is responsible for supervising teams and shall have a written policy that identifies and describes the team relationships in which its licensees may engage. Designated brokers shall maintain a chronological written record of all teams and team membership and provide such records to the commission upon request.

**History:** Effective July 1, 2010; amended effective July 1, 2022.

**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 Prelicensure Course Approval
70-02-02-03	Qualifications for Classroom Instructors
70-02-02-04	Courses of Study Approved by the Commission [Repealed]
70-02-02-05	Commission Review of all Real Estate Courses
70-02-02-06	Approval of Classroom Instruction [Repealed]
70-02-02-07	Review of Courses Not Having Received Prior Approval [Repealed]
70-02-02-08	Withdrawal of Approval
70-02-02-09	Advertising of Approved Courses
70-02-02-10	Course Hour
70-02-02-11	Coordinators [Repealed]
70-02-02-12	Examinations
70-02-02-13	Certificate of Completion
70-02-02-14	Facilities [Repealed]
70-02-02-15	Course Content Must Not Be Duplicated [Repealed]
70-02-02-16	No Credit Given for Salesmanship Courses [Repealed]
70-02-02-17	Correspondence Courses [Repealed]
70-02-02-18	Online-Only Asynchronous Prelicensure Courses Must Be Certified

### **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 offering prelicensure courses to meet the requirements in North Dakota Century Code section 43-23-08.

**History:** Amended effective July 1, 2022.

**General Authority:** NDCC 28-32-02, 43-23-08, 43-23-08.2

**Law Implemented:** NDCC 43-23-08

### **70-02-02-02. Application for prelicensure course approval.**

In order for any prelicensure course to be approved by the real estate commission a complete application shall be filed with the commission not less than forty-five days prior to the contemplated date of offering the first course. The application, in addition to the name and address of the school offering the course as well as any other identifying criteria which the commission may require, must be accompanied by a nonrefundable fee not to exceed two hundred dollars, and must include:

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. An instructor application or resume on all instructors and subject to be taught.
3. The date, time, and place of any synchronous course hours.
4. Tuition and other costs or fees for students.

**History:** Amended effective January 1, 1992; January 1, 2006; July 1, 2022.

**General Authority:** NDCC 28-32-02, 43-23-08, 43-23-13

**Law Implemented:** NDCC 43-23-08, 43-23-13

**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.**

Repealed effective July 1, 2022.

**70-02-02-05. Commission review of all real estate courses.**

Every three years, the school shall submit another complete application. The commission shall review the school to determine if it meets the requirements of law and commission for certification for another three years.

**History:** Amended effective July 1, 2022.

**General Authority:** NDCC 28-32-02, 43-23-08

**Law Implemented:** NDCC 43-23-08

**70-02-02-06. Approval of classroom instruction.**

Repealed effective July 1, 2022.

**70-02-02-07. Review of courses not having received prior approval.**

Repealed effective July 1, 2022.

**70-02-02-08. Withdrawal of approval.**

If the commission determines a school 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.

**History:** Amended effective July 1, 2022.

**General Authority:** NDCC 28-32-02, 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 real estate licensing examination or that the 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. The phrase "North Dakota real estate commission" may not appear in the advertisement in larger type than the words and phrases preceding or following the phrase "North Dakota real estate commission". 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 over any other course of instruction.

**History:** Amended effective July 1, 2022.

**General Authority:** NDCC 28-32-02, 43-23-08

**Law Implemented:** NDCC 43-23-08

**70-02-02-10. Course hour.**

A course hour shall be defined as fifty minutes.

**History:** Amended effective October 1, 2015; July 1, 2022.

**General Authority:** NDCC 28-32-02, 43-23-08

**Law Implemented:** NDCC 43-23-08

**70-02-02-11. Coordinators.**

Repealed effective July 1, 2022.

**70-02-02-12. Examinations.**

Each prelicensure course shall include examinations as a component to determine successful course completion.

The weight of examinations as the determination of successful completion of a course and the criteria for passing of examinations may be developed by each school. 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.

**History:** Amended effective July 1, 2022.

**General Authority:** NDCC 43-23-08, 43-23-08.2

**Law Implemented:** NDCC 43-23-08, 43-23-08.2

**70-02-02-13. Certificate of completion.**

Each school shall issue to the students successfully completing a course of instruction an official certificate of completion which reflects the school's name, course title, 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.

**History:** Amended effective July 1, 2022.

**General Authority:** NDCC 43-23-08, 43-23-08.2

**Law Implemented:** NDCC 43-23-08, 43-23-08.2

**70-02-02-14. Facilities.**

Repealed effective July 1, 2022.

**70-02-02-15. Course content must not be duplicated.**

Repealed effective July 1, 2022.

**70-02-02-16. No credit given for salesmanship courses.**

Repealed effective July 1, 2022.

**70-02-02-17. Correspondence courses.**

Repealed effective July 1, 2022.

**70-02-02-18. Online-only asynchronous prelicensure courses must be certified.**

Online-only asynchronous prelicensure courses must be certified by the association of real estate license law officials before being approved by the commission. A student must complete the online-only asynchronous prelicensure course within one year of the date of enrollment.

**History:** Effective December 1, 1999; amended effective July 1, 2022.

**General Authority:** NDCC 43-23-08, 43-23-08.1, 43-23-08.2

**Law Implemented:** NDCC 43-23-08, 43-23-08.2

## **CHAPTER 70-02-03 LICENSEE RESPONSIBILITIES**

### Section

70-02-03-01	Application of Licensee Responsibilities
70-02-03-02	Advertising [Repealed]
70-02-03-02.1	Advertising
70-02-03-03	Commission Split - Out of State
70-02-03-04	Listings
70-02-03-05	Listing Contracts Must Include Commission Amount
70-02-03-05.1	Buyer's Broker Agreements
70-02-03-06	Offer to Purchase
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70-02-03-09	Use of False or Misleading Documents
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70-02-03-11	Negotiate Listings
70-02-03-12	Refund of Purchaser's Money
70-02-03-13	Personal Interest
70-02-03-14	Accepting Nonnegotiable Instruments
70-02-03-15	Agency Disclosure Required
70-02-03-15.1	Licensee to Disclose Agency Relationships - Duty of Confidentiality
70-02-03-15.2	Licensee to Disclose Nonagency Relationship
70-02-03-16	Licensee Acting in Own Behalf to Set Forth Terms and Conditions and Make Disclosure
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 discipline a licensee upon violation by a licensee of any provisions of the licensee responsibilities.

**History:** Amended effective January 1, 1992; April 1, 2008; July 1, 2022.

**General Authority:** NDCC 28-32-02, 43-23-08

**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.
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 equal to or greater than, in size and visibility, the name of any salesperson, associate broker, or team on the advertising. Discipline of licensees based on failure to meet this size and visibility requirement will be delayed until January 1, 2023.

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 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 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.
8. Teams. A team is two or more licensees who work for the same brokerage under the supervision of the designated broker, work together on real estate transactions to provide real estate brokerage services, represent themselves to the public as being part of a team, and are designated by a team name. Advertising by a team must comply with all requirements of section 70-02-03-02.1. Teams may not advertise in any manner which suggests a team is an independent real estate brokerage firm.

**History:** Effective January 1, 1992; amended effective February 1, 2004; April 1, 2008; July 1, 2022.

**General Authority:** NDCC 28-32-02, 43-23-08

**Law Implemented:** 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 if the latter broker does not carry on any of the negotiations 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:** NDCC 43-23-11.1(1)

**Law Implemented:** 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:** NDCC 28-32-02.2

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

**Law Implemented:** 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 licensee 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 licensees shall make certain that all of the terms and conditions of the real estate transaction are included in the offer to purchase. Licensees 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; July 1, 2022.

**General Authority:** NDCC 28-32-02, 43-23-08, 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, 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 for the represented party or parties in the broker's files.

**History:** Amended effective April 1, 2008; July 1, 2022.

**General Authority:** NDCC 28-32-02, 43-23-08

**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 licensee 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 or assessment of fines.

**History:** Amended effective August 1, 1981; January 1, 1992; July 1, 2022.

**General Authority:** NDCC 28-32-02, 43-23-08, 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 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; July 1, 2022.

**General Authority:** NDCC 28-32-02, 43-23-08, 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.

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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

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70-02-04-22	Online-Only Asynchronous Education Courses Must Be Certified and Approved
70-02-04-23	Model Rule for Distance Education [Repealed]

### **70-02-04-01. Continuing education defined.**

As used in this chapter, continuing education, unless the context otherwise requires, means education 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, and to qualify for license activation and renewal.

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; July 1, 2022.

**General Authority:** NDCC 28-32-02, 43-23-08, 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 twelve hours of continuing education in approved courses every continuing education period. The continuing education period is 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 for salespersons or brokers. 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; July 1, 2022.

**General Authority:** NDCC 28-32-02, 43-23-08(6), 43-23-08.2

**Law Implemented:** NDCC 43-23-08.2

**70-02-04-03. Hour defined.**

An hour of continuing education is fifty minutes. Time spent on breaks does not count toward the fifty-minute hour.

**History:** Effective August 1, 1981; amended effective July 1, 2022.

**General Authority:** NDCC 28-32-02, 43-23-08, 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 is 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; amended effective July 1, 2022.

**General Authority:** NDCC 28-32-02, 43-23-08, 43-23-08.2

**Law Implemented:** NDCC 43-23-08.2

#### **70-02-04-05. Nonqualifying courses.**

The following courses will not be considered as qualifying for continuing education purposes:

1. Courses in general office and business skills, such as report writing.
2. Sales promotion or other meetings held in conjunction with the general business of the licensee's broker.
3. Any course certified by the use of a challenge examination. All students must complete the required number of classroom hours in order to receive credit.

The listing of the above courses 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; July 1, 2022.

**General Authority:** NDCC 28-32-02, 43-23-08, 43-23-08.2

**Law Implemented:** NDCC 43-23-08.2

#### **70-02-04-06. Criteria for course approval.**

The commission may approve education provided by a course sponsor, such as 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, will consider the following criteria:

1. Courses will be eligible for approval only if the total instruction time is two hours or more.
2. A course sponsor shall certify to the best of its knowledge the attendance of each student at the offering. The course sponsor's criteria for measuring attendance shall be submitted in the application for course approval.
3. The course sponsor shall maintain, for a minimum of three years, records of students successfully completing any course.
4. Credit is earned based on in-person or virtual attendance or completion of online-only asynchronous courses.
5. Each course shall have a coordinator supervising the program.
6. All instructors in a real estate course shall complete and submit an instructor application for each course before teaching the course. Instructors 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; July 1, 2022.

**General Authority:** NDCC 28-32-02, 43-23-08, 43-23-08.2

**Law Implemented:** NDCC 43-23-08.2

#### **70-02-04-07. Application for approval of courses.**

A course sponsor shall apply for approval of courses in a form prescribed by the commission. The application form shall include:

1. The name, address, telephone number, and website of the course sponsor.
2. The name and electronic mail address of the course coordinator.
3. The title of the course.
4. A description, copies, or examples of all materials to be distributed to the participants.
5. The date and exact location of the course.
6. The duration and time of course.
7. 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.
8. A sample of any proposed advertising used for promotional purposes.
9. The method of evaluation of the program.
10. The procedure for measuring attendance.
11. An instructor application for each instructor.
12. A fee not to exceed one hundred dollars per course.

**History:** Effective August 1, 1981; amended effective July 1, 2022.

**General Authority:** NDCC 28-32-02, 43-23-08, 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 course sponsor 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; amended effective July 1, 2022.

**General Authority:** NDCC 28-32-02, 43-23-08, 43-23-08.2

**Law Implemented:** NDCC 43-23-08.2

#### **70-02-04-10. Material change.**

The course 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; amended effective July 1, 2022.

**General Authority:** NDCC 28-32-02, 43-23-08, 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, 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; amended effective July 1, 2022.

**General Authority:** NDCC 28-32-02, 43-23-08, 43-23-08.2

**Law Implemented:** NDCC 43-23-08.2

#### **70-02-04-12. Correspondence programs.**

Repealed effective July 1, 2022.

#### **70-02-04-13. Substantively identical courses.**

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; July 1, 2022.

**General Authority:** NDCC 28-32-02, 43-23-08(6), 43-23-08.2

**Law Implemented:** NDCC 43-23-08.2

#### **70-02-04-14. Maximum hours of accreditation per day.**

Repealed effective July 1, 2022.

#### **70-02-04-15. Exemptions from continuing education requirement.**

Any salesperson who completed the prerequisite ninety hours of course of study to obtain a license is exempt from the continuing education requirement for the first license renewal. Any broker, upon successful completion of the real estate broker 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; July 1, 2022.

**General Authority:** NDCC 28-32-02, 43-23-08(6), 43-23-08.2

**Law Implemented:** NDCC 43-23-08.2

#### **70-02-04-16. Service as an instructor.**

Instructors who are licensees may request one-hour credit for every hour as an instructor of a unique course, not to exceed fifty percent of the continuing education requirement for any continuation education period and not to replace any mandatory continuing education requirement. Requests for credit must be accompanied by an outline of the instruction and be submitted before a licensee renews their license. The commission may disapprove a request.

**History:** Effective August 1, 1981; amended effective December 1, 1999; July 1, 2010; July 1, 2022.

**General Authority:** NDCC 28-32-02, 43-23-08(6), 43-23-08.2

**Law Implemented:** NDCC 43-23-08, 43-23-08.2

#### **70-02-04-17. Responsibilities of course sponsors.**

In addition to other responsibilities imposed on course 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; amended effective July 1, 2022.

**General Authority:** NDCC 28-32-02, 43-23-08, 43-23-08.2

**Law Implemented:** NDCC 43-23-08.2

#### **70-02-04-18. Facilities.**

Repealed effective July 1, 2022.

#### **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 and audits.**

By applying for the commission's approval of any course in real estate, the sponsor or coordinator agrees to permit periodic inspections, audits, 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; amended effective July 1, 2022.

**General Authority:** NDCC 28-32-02, 43-23-08, 43-23-08.2

**Law Implemented:** NDCC 43-23-08.2

**70-02-04-21. Continuing education certificate of completion.**

All course sponsors shall provide an individual certificate of completion to each licensee upon completion of the course under the following conditions:

1. No certificate of completion 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, course number, date, location of course, number of approved credit hours, and course sponsor or instructor.
3. The licensee shall retain the 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; July 1, 2022.

**General Authority:** NDCC 28-32-02, 43-23-08, 43-23-08.2

**Law Implemented:** NDCC 43-23-08.2

**70-02-04-22. Online-only asynchronous education courses must be certified and approved.**

1. Courses offered online only and in an asynchronous format must be certified by the association of real estate license law officials, and approved by the commission. The commission may waive the certification 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.
2. Courses which are presently certified by the association of real estate license law officials must be approved under this rule upon provision of appropriate documentation that the certification by the association of real estate license law officials is in effect and that the course meets the content requirements and any other requirements of the commission. Approval under this subsection must cease immediately if the certification by the association of real estate license law officials is discontinued for any reason.

**History:** Effective December 1, 1999; amended effective July 1, 2022.

**General Authority:** NDCC 28-32-02, 43-23-08, 43-23-08.2

**Law Implemented:** NDCC 43-23-08.2

**70-02-04-23. Model rule for distance education.**

Repealed effective July 1, 2022.

## CHAPTER 70-02-05 ERRORS AND OMISSIONS INSURANCE

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### **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 the group plan carrier has submitted to the commission a list of all policyholders, or a licensee has submitted to the commission a certificate of equivalent coverage with a list of all licensees covered by the policy on a form prescribed by the commission.
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; amended effective July 1, 2022.

**General Authority:** NDCC 28-32-02, 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 designated 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; amended effective July 1, 2022.  
**General Authority:** NDCC 28-32-02, 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. Release 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 broker shall immediately destroy the license and the licensee's name and licensee's number must be removed from the broker's website.

**History:** Effective February 1, 2002; amended effective January 1, 2006; July 1, 2022.

**General Authority:** NDCC 28-32-02, 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 before the expiration date of the term.

**History:** Effective February 1, 2002; amended effective July 1, 2022.

**General Authority:** NDCC 28-32-02, 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