

**Fifty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 7, 2003**

SENATE BILL NO. 2145
(Senators J. Lee, Lyson)
(Representatives Weiler, Potter, Wieland, Carlson)
(At the request of the Real Estate Commission)

AN ACT to amend and reenact subsections 1, 3, and 4 of section 43-23-11.1 of the North Dakota Century Code, relating to real estate broker and real estate salesperson fines and recovery of investigation and legal fees; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1, 3, and 4 of section 43-23-11.1 of the North Dakota Century Code are amended and reenacted as follows:

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

- h. Failing or refusing upon demand to produce any document, book, or record in the licensee's possession or under that person's control, concerning any real estate transaction under investigation by the commission.
- i. Offering real property for sale or lease without the knowledge and consent of the owner or the owner's authorized agent or on any terms other than those authorized by the owner or agent.
- j. Refusing, because of race, color, national origin, or ethnic group, to show, sell, lease, or rent any real estate to prospective renters, lessees, or purchasers.
- k. Failing or refusing upon demand to furnish copies of any document pertaining to any transaction dealing with real estate to any person whose signature is affixed thereto.
- l. Paying compensation or commission in connection with any real estate sale, lease, or other transaction to any person who is not licensed as a real estate broker or real estate salesperson under this chapter.
- m. Failing to disclose to an owner the licensee's intention or true position if the licensee directly or indirectly through a third party purchases for himself or herself or acquires or intends to acquire any interest in or any option to purchase property which has been listed with the licensee's office for sale or lease.
- n. Failure to include a fixed date of expiration in any written listing agreement and failure to leave a copy of such agreement with the principal.
- o. Failure by a broker to deliver to the seller in every real estate transaction, at the time said transaction is consummated, a complete, detailed closing statement, showing all of the receipts and disbursements handled by such broker for the seller; also failure to deliver to the buyer a complete statement showing all money received in said transaction from such buyer and how and for what the same was disbursed, and to retain true copies of such statements in the broker's files.
- p. Violating any provisions of this chapter or rule or regulation promulgated by the commission.
- q. Violation of any provision of such realtor's code of ethics as the commission has or may promulgate and adopt.
- r. Accepting a commission or valuable consideration as a real estate salesperson for the performance of any of the acts specified in this chapter, or by rule or regulation of the commission, from any person except the licensed real estate broker under whom the individual is licensed as a salesperson.
- s. If the licensee is a broker, allowing any unlicensed salesperson to do any act or engage in any activity regulated by this chapter or under rule or regulation of the commission, which is carried on in the name of or under the authority of the broker.
- t. Failure of a salesperson to place with that person's employing broker for deposit in the brokerage trust account all real estate trust moneys received by the salesperson within twenty-four hours of the time of receipt; or failure of the employing broker to place such moneys for deposit within twenty-four hours of the time of receipt from the salesperson. Provided that if trust money is received on a day prior to a holiday or on another day prior to which the depository is closed where the trust fund is maintained, the moneys must then be deposited during the next business day of the depository.
- u. Failure of the licensee to reduce an offer to writing where a proposed purchaser requests that such offer be submitted to the seller, or failure of the licensee to submit

all offers to a seller when such offers are received prior to the seller accepting an offer in writing and until the broker has knowledge of such acceptance.

- v. Any other conduct, whether of the same or of a different character than specified in this subsection, which constitutes dishonesty or fraudulent conduct, whether arising within or without the pursuit of that person's licensed privilege.
 - w. Any conduct which in the determination of the commission does not meet the generally accepted standard of expertise, care, or professional ability expected of real estate brokers or salespersons, provided that any disciplinary measures by the commission under this subdivision must be limited to the issuance of a letter of reprimand to the offending licensee.
3. ~~No~~ A license may not be revoked or suspended, no 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. ~~Any monetary fine imposed may not exceed the sum of one thousand dollars.~~ In any order or decision issued by the commission in resolution of a disciplinary proceeding in which disciplinary action is imposed against a licensee, the commission may direct the licensee to pay a fine not to exceed two thousand five hundred dollars and actual costs, including attorney's fees, incurred by the commission in the investigation and prosecution of the case. All fines collected must be deposited in the commission's license fee account.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-eighth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2145.

Senate Vote: Yeas 45 Nays 2 Absent 0

House Vote: Yeas 90 Nays 0 Absent 4

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2003.

Approved at _____ M. on _____, 2003.

Governor

Filed in this office this _____ day of _____, 2003,
at _____ o'clock _____ M.

Secretary of State