

Sixty-second  
Legislative Assembly  
of North Dakota

ENGROSSED HOUSE BILL NO. 1430

Introduced by

Representatives Louser, Klemin, Weiler

Senators Hogue, J. Lee

1 A BILL for an Act to amend and reenact sections 43-23-06.1 and 43-23-12.1 of the North  
2 Dakota Century Code, relating to definitions and the duties of real estate brokerage firms.

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

4 **SECTION 1. AMENDMENT.** Section 43-23-06.1 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6 **43-23-06.1. Definitions.**

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

8 1. "Appointed agent" means a licensee appointed by a designated broker of the  
9 licensee's real estate brokerage firm to act solely for a client of that brokerage firm to  
10 the exclusion of other licensees of that brokerage firm.

11 2. "Client" means a person ~~who~~that has entered ~~into~~ a written agency agreement with a  
12 real estate brokerage firm.

13 3. "Commission" means the North Dakota real estate commission.

14 4. "Customer" means a buyer, prospective buyer, seller, lessee, or lessor that is not  
15 represented by that real estate brokerage firm in a real property transaction.

16 5. "Designated broker" means a licensee designated by a real estate brokerage firm to  
17 act on behalf of the brokerage firm.

18 5-6. "Dual agency" means a situation in which a real estate brokerage firm; or ~~its~~the real  
19 estate brokerage firm's licensees; owe a duty to more than one party in a real estate  
20 transaction. Dual agency is established only as follows:

21 a. When one licensee represents both the buyer and the seller in a real estate  
22 transaction; or

23 b. When two or more licensees, licensed to the same broker, each represents a  
24 party to the real estate transaction.

1 "Dual agency" does not exist unless both the seller and the buyer in a real estate  
2 transaction have written agency agreements with the same real estate brokerage firm.  
3 For purposes of "dual agency" a subagency arrangement is not a written agency  
4 agreement.

5 ~~6. "Person" includes individuals, corporations, limited liability companies, partnerships,~~  
6 ~~trusts, associations, cooperatives, or other firms or entities, foreign or domestic.~~

7 7. "Licensee" means a real estate broker, an associate real estate broker, or a real estate  
8 salesperson who is associated with a real estate brokerage firm.

9 8. "Real estate", "real property", "realty", or words of like import, means any interest or  
10 estate in land, including leaseholds, whether such interest or estate is corporeal,  
11 incorporeal, freehold, or nonfreehold, and whether situated in this state or elsewhere;  
12 provided, however, that the meaning as used in this chapter does not include oil, gas,  
13 or mineral leases, nor does it include any other mineral leasehold, mineral estate, or  
14 mineral interest of any nature whatsoever.

15 ~~8-9.~~ "Real estate broker", or "broker", means any person ~~wh~~that, for another, for a fee,  
16 commission, salary, or other consideration, or with the intention or expectation of  
17 receiving or collecting such compensation from another, engages in or offers or  
18 attempts to engage in, either directly or indirectly by a continuing course of conduct or  
19 by a single act or transaction, any of the following acts:

20 a. Lists, offers, attempts, or agrees to list real estate or any interest ~~therein~~in that  
21 real estate, or any improvements affixed ~~thereon~~on that real estate for sale,  
22 exchange, or lease.

23 b. Sells, exchanges, purchases, or leases real estate or any interest ~~therein~~in that  
24 real estate, or any improvements affixed ~~thereon~~on that real estate.

25 c. Offers to sell, exchange, purchase, or lease real estate or any interest ~~therein~~in  
26 that real estate, or any improvements affixed ~~thereon~~on that real estate.

27 d. Negotiates, or offers, attempts, or agrees to negotiate the sale, exchange,  
28 purchase, or leasing of real estate or any interest ~~therein~~in that real estate, or any  
29 improvements affixed ~~thereon~~on that real estate.

- 1 e. Buys, sells, offers to buy or sell, or otherwise deals in options on real estate or  
2 any interest ~~therein~~ in that real estate, or any improvements ~~thereon~~ on that real  
3 estate.
- 4 f. Who is a licensee under this chapter and performs any of the acts set out in this  
5 subsection while acting in the licensee's own behalf.
- 6 g. Advertises or holds out as being engaged in the business of buying, selling,  
7 exchanging, or leasing of real estate or any interest ~~therein~~ in that real estate, or  
8 any improvements ~~thereon~~ on that real estate.
- 9 h. Assists or directs in the procuring of prospects, calculated to result in the sale,  
10 exchange, or leasing of real estate or any interest ~~therein~~ in that real estate, or  
11 any improvements ~~thereon~~ on that real estate.
- 12 ~~9-10.~~ "Real estate brokerage firm" means a person that is providing real estate brokerage  
13 services through that person's licensees and which is licensed by the commission as a  
14 real estate brokerage firm.
- 15 ~~40-11.~~ "Real estate salesperson" means any person ~~who~~ that for a fee, compensation, salary,  
16 or other consideration, or in the expectation or upon the promise ~~thereof~~ of that  
17 compensation, is employed or engaged by a licensed real estate broker to do any act  
18 or deal in any transaction as provided in subsection ~~56~~ for or on behalf of such  
19 licensed real estate broker.

20 **SECTION 2. AMENDMENT.** Section 43-23-12.1 of the North Dakota Century Code is  
21 amended and reenacted as follows:

22 **43-23-12.1. Real estate brokerage firm - Duties required.**

- 23 1. A real estate brokerage firm and ~~its~~ the real estate brokerage firm's licensees,  
24 ~~that~~ which provide services through a written agency agreement for a client, are bound  
25 to that client by the duties of loyalty, obedience, disclosure, confidentiality, reasonable  
26 care, diligence, and accounting, subject to the provisions of this chapter and subject to  
27 any rules adopted under this chapter. The agency relationship, which must be  
28 established through a written agency agreement, may be a seller agency, a  
29 buyer agency, or a subagent dual agency, an appointed agency, a subagency, or,  
30 if another form of agency relationship. If a different relationship, including a nonagency  
31 relationship with a customer, between the real estate brokerage firm and the person

1           for ~~whom~~which the real estate brokerage firm performs the services is intended,  
2           ~~including a dual agent~~, the relationship must be disclosed in writing pursuant to rules  
3           adopted by the board.

4           2. If a buyer, prospective buyer, or seller is not represented by a real estate brokerage  
5           firm in the real property transaction, that buyer or seller remains a customer, and, as to  
6           that customer, the real estate brokerage firm and the real estate brokerage firm's  
7           licensees are nonagents that owe the following legal duties: to perform customary acts  
8           typically performed by real estate licensees in assisting a transaction to the  
9           transaction's closing or conclusion if these acts are to assist the customer for which  
10           the services are directly provided; to perform these acts with honesty and good faith;  
11           and to disclose to the customer any adverse material facts actually known by the  
12           licensee which pertain to the title of the real property, the physical condition of the real  
13           property, and defects in the real property. These limited duties are subordinate to any  
14           duties the real estate brokerage firm and the real estate brokerage firm's licensees  
15           owe to a client in the same transaction.

16           3. Unless otherwise agreed in writing, a real estate brokerage firm and the real estate  
17           brokerage firm's licensees are not obligated to a client, to a customer, or to any other  
18           person to discover defects in any real property, to verify the ownership of any real  
19           property, or to independently verify the accuracy or completeness of any statement or  
20           representation made by any person other than the real estate brokerage firm and the  
21           real estate brokerage firm's licensees involved in the transaction under question.

22           4. Unless the licensee is directly involved in a transaction regarding the affected real  
23           property, this section does not result in imputing knowledge, regarding the affected  
24           real property, of one licensee within a real estate brokerage firm to another licensee  
25           within the same real estate brokerage firm or in imposing a duty upon a licensee within  
26           a real estate brokerage firm to disclose facts that are known by that licensee regarding  
27           the affected real property to another licensee within the same real estate brokerage  
28           firm.

29           5. If a real estate brokerage firm and the real estate brokerage firm's licensees represent  
30           two or more buyers or lessees as clients that desire to make an offer for the purchase  
31           or lease of the same real property, the real estate brokerage firm and the real estate

1           brokerage firm's licensees do not breach any duty by assisting such clients with  
2           multiple offers, even though the interests of such clients are competing, and are not  
3           required to disclose the existence of competing offers, except as otherwise set forth  
4           under this subsection. The real estate brokerage firm and the real estate brokerage  
5           firm's licensees shall continue to honor agency duties to such clients, except as limited  
6           under this subsection. However, if an individual licensee has a written agency  
7           agreement with two or more buyers that desire to make an offer for the purchase or  
8           lease of the same real property, that licensee shall disclose to those competing buyer  
9           clients the fact that a competing written offer has been submitted by another buyer  
10          client of that licensee.

11          6. If a real estate brokerage firm and the real estate brokerage firm's licensees represent  
12          two or more sellers or lessors as clients that desire to offer competing real property for  
13          sale or lease, the real estate brokerage firm and the real estate brokerage firm's  
14          licensees do not breach any duty to such clients by performing such services, even  
15          though the interests of such clients are competing. In such event, the real estate  
16          brokerage firm and the real estate brokerage firm's licensees shall continue to honor  
17          agency duties to such clients, except as limited under this subsection.