

HOUSE BILL NO. 1258

Introduced by

Representatives Louser, Adams, Boschee, Mock, Roers Jones, Steiner, Vetter

Senators D. Larsen, Meyer, J. Roers

1 A BILL for an Act to amend and reenact sections 43-23-02, 43-23-03, 43-23-04, 43-23-05,
2 43-23-08, 43-23-08.2, 43-23-09, 43-23-10, 43-23-11.1, 43-23-12, 43-23-13.1, 43-23-14.1,
3 43-23-16, 43-23-19, 43-23.1-14, 43-23.2-02, and 43-23.2-03 of the North Dakota Century Code,
4 relating to real estate commission administration and real estate licensing; to repeal chapter
5 43-23.4 of the North Dakota Century Code, relating to real estate broker trust accounts; and to
6 provide a penalty.

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

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

10 **43-23-02. Commission - Term - Duties - Records.**

11 The governor shall appoint each member of the commission for a term of five years. Terms
12 must be staggered so the term of one member expires each year. At the expiration of the term
13 of any member of the commission, the governor shall appoint a successor for a term of five
14 years. A commissioner may not serve more than two consecutive five-year terms. In the event
15 of a vacancy on the commission for any reason the governor shall appoint a member for the
16 unexpired term of that member.

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

20 ~~The commission shall adopt a seal with North Dakota real estate commission engraved on~~
21 ~~the seal, by which it shall authenticate its proceedings. Copies of all records and papers in the~~
22 ~~office of the commission, duly certified and authenticated by the seal of such commission, must~~
23 ~~be received in evidence in all courts equally and with like effect as the original.~~

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

3 **43-23-03. Commission office - Executive director.**

4 The commission shall employ an executive director who shall furnish bond as required by
5 the commission and who shall keep a record of all proceedings, transactions, communications,
6 and official acts of the commission, ~~be and who is~~ custodian of all moneys received for licenses
7 which ~~must, by the executive director, be deposited~~ shall deposit for safekeeping in depositories
8 designated by the commission. The executive director ~~must be~~ is the custodian of all records of
9 the commission and shall perform such other duties as the commission may require. The
10 commission is ~~authorized to~~ may fix the salary of the executive director, ~~to~~ employ such other
11 employees as may be necessary to properly carry out the provisions of this chapter, ~~to~~ fix
12 salaries and prescribe duties of such employees, and ~~to~~ make such other expenditures as are
13 necessary to carry out the provisions of this chapter. The commission shall meet annually and
14 upon call by the executive director upon a written request of three or more members of the
15 commission. ~~The place of meeting of the said commission must be at the office of the executive~~
16 ~~director.~~ The location of the office of the executive director must be at such places within the
17 state as the commission may designate. The commission shall maintain all files, records, and
18 property of the commission at the office of the executive director.

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

21 **43-23-04. Commission - Compensation.**

22 The members of the commission ~~shall~~ are entitled to receive ~~fifty dollars per diem, not to~~
23 ~~exceed the daily compensation rate a member of the legislative assembly is entitled to receive~~
24 ~~under section 54-35-10 for attendance at a legislative management committee meeting, as~~
25 ~~determined by the commission in the annual budget process,~~ for each day actually engaged in
26 the service of the commission and ~~must~~ to be paid actual and necessary traveling expenses to
27 be paid only from the fund derived from fees collected in the administration of this chapter. All
28 moneys or fees collected or received by the commission must be deposited and disbursed in
29 accordance with section 54-44-12.

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

1 **43-23-05. Real estate license required.**

2 ~~Ne~~A person may not act as a real estate broker or real estate salesperson, or advertise or
3 assume to act as ~~such~~a real estate broker or real estate salesperson, without a license issued
4 by the real estate commission. ~~Ne~~A person is not entitled to collect any fees, compensation, or
5 commission as a real estate broker or real estate salesperson without having first complied with
6 the provisions of this chapter. ~~Ne~~A copartnership, association, corporation, or limited liability
7 company may not be granted a license, unless at least one partner, shareholder, member,
8 manager, or officer of the copartnership, association, corporation, or limited liability company,
9 actually engaged as a real estate broker ~~or real estate salesperson as defined herein~~, holds a
10 license as a real estate broker, and unless every employee who acts as a real estate
11 salesperson for ~~such~~the copartnership, association, corporation, or limited liability company
12 holds a license as a real estate salesperson.

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

15 **43-23-08. License standards.**

- 16 1. Licenses and ~~the~~license renewals ~~thereof~~ may be granted only to persons who bear a
17 good reputation for honesty, truthfulness, and fair dealing and who are competent to
18 transact the business of a real estate broker or a real estate salesperson in such
19 manner as to safeguard the interest of the public, and whose real estate license has
20 not been revoked in this or any other state within two years ~~prior to~~before the date of
21 application. To determine the competency of applicants, the commission shall
22 prescribe and hold examinations at designated times and places.
- 23 2. In addition to the requirements established by subsection 1, an applicant for a broker's
24 or salesperson's license must be at least eighteen years of age.
- 25 3. Every applicant for a license as a real estate broker:
- 26 a. ~~Shall~~Must have been actively engaged as a licensed real estate salesperson for
27 a period of at least ~~one year~~two years preceding the date of application, ~~which,~~
28 ~~beginning July 1, 1979, is increased to two years;~~ or
- 29 b. ~~Shall~~Must have had experience as determined by the commission to be
30 substantially equal to that which a licensed real estate salesperson would

1 ordinarily receive during a period of ~~one year, which, beginning July 1, 1979, is~~
2 increased to two years.

3 4. As a prerequisite for licensure, an applicant for a salesperson's license shall furnish to
4 the commission evidence the applicant has successfully completed at least ninety
5 hours in courses of study approved by the commission. An applicant for a broker's
6 license must have successfully completed an additional sixty hours in courses of study
7 approved by the commission. An applicant for a salesperson's license may take the
8 licensing examination before fulfillment of the prerequisite educational requirement;
9 however, the commission may not issue a salesperson's license to an applicant unless
10 satisfactory evidence of completion of this prerequisite educational requirement is
11 furnished to the commission. An applicant for a broker's license must have
12 satisfactorily fulfilled the educational requirement before taking the broker's licensing
13 examination.

14 5. If the commission finds ~~that~~ an applicant could not acquire employment as a licensed
15 real estate salesperson because of conditions existing in the area where the
16 salesperson resides, ~~then~~ the experience requirements established in subdivisions a
17 and b of subsection 3 may be waived by the commission. The educational
18 requirements of subsection 4 may not be waived by the commission, but guidelines
19 may be established ~~whereby~~ by which applicants who have engaged in certain
20 educational courses of study which are closely related to the real estate profession
21 may be deemed to have satisfied this requirement.

22 6. The commission may adopt reasonable rules and regulations pursuant to the
23 provisions of chapter 28-32 relative to procedures for licensing, approval of
24 coursework, and for the type of certification or proof of coursework completion that
25 must be submitted.

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

28 **43-23-08.2. License renewal - Continuing education required.**

29 1. The commission may establish the conditions under which each applicant for renewal
30 of a broker's or salesperson's license, in addition to the requirements of section
31 43-23-08, shall submit proof of participation in approved continuing education. In

1 establishing the conditions for continuing education, the commission may determine
2 the required number of hours, the frequency and conditions of reporting requirements,
3 and all other terms and conditions of continuing education compliance. The
4 commission shall set standards for the approval of lectures, seminars, courses of
5 instruction, and correspondence education courses that qualify for satisfaction of this
6 requirement, and shall maintain a current list of lectures, seminars, courses of
7 instruction, and correspondence education courses so approved. Lectures, seminars,
8 courses of instruction, and correspondence Education courses may not require passing
9 of a test to qualify for satisfaction of this requirement. Licensees must have the option
10 of attending an approved course of instruction in person or taking an approved
11 correspondence course. Attendance at a course or the completion of a
12 correspondence an education course must be documented in accordance with
13 procedures established by the commission. The commission may adopt rules
14 concerning implementation of this section pursuant to chapter 28-32.

15 2. A license may not be renewed by the commission unless the proper certification
16 showing fulfillment of the continuing education requirements of this section and the
17 appropriate licensing fees are submitted to the commission in accordance with section
18 43-23-13.1.

19 3. The commission may exempt licensees from the continuing education requirements of
20 this section for reasons relating to the licensee's health, military service, or for other
21 good cause. Licensees who have held a real estate license for fifteen continuous
22 years on January 1, 1984, are exempt from the requirements of this section.

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

25 **43-23-09. License application.**

26 Every application for a real estate broker's license or a real estate salesperson's license
27 must be in writing upon blanks prepared by the commission and contain such data and
28 information as the commission may require.

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

1 **43-23-10. Nonresident brokers - Reciprocity - Consent to service.**

2 A nonresident broker regularly engaged in the real estate business as a vocation and who
3 maintains a definite place of business and is licensed in ~~some other~~another state, ~~which offers~~
4 ~~the same privileges to the licensed brokers of this state~~, may not be required to maintain a
5 place of business within this state. The commission shall recognize the license issued to a real
6 estate broker by another state as satisfactorily qualifying the nonresident broker for license as a
7 broker; provided, ~~that~~ the nonresident broker has qualified for license in the broker's own state
8 and also that the other state permits licenses to be issued to licensed brokers in this state.
9 Every nonresident applicant shall file an irrevocable consent that suits and actions may be
10 commenced against ~~sueh~~the applicant in the proper court of any county of the state in which a
11 claim for relief may arise, in which the plaintiff may reside, by the service of any process or
12 pleading authorized by the laws of this state, on any member of the commission, or the
13 executive director, ~~said~~the consent stipulating and agreeing that ~~sueh~~ service of ~~sueh~~the
14 process or pleading ~~shall be~~is taken and held in all courts to be as valid and binding as if due
15 service had been made upon ~~said~~the applicant in this state. The consent must be duly
16 acknowledged. Any service of process or pleading must be by duplicate copies, one of which
17 must be filed in the office of the commission and the other immediately forwarded by registered
18 mail to the last-known main office of the applicant against whom ~~said~~the process or pleading is
19 directed, and no default in ~~any~~suchthe proceedings or action may be taken except upon
20 affidavit or certificate of the commission or the executive director, that a copy of ~~said~~the process
21 or pleading was mailed to the defendant as ~~herein~~ required under this section, and ~~no~~ judgment
22 by default may not be taken in any such action or proceeding until after thirty days from the date
23 of mailing of ~~sueh~~the process or pleading to the nonresident defendant.

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

26 **43-23-11.1. Investigations, grounds for refusal, suspension or revocation of license -**
27 **Hearing - Appeal.**

28 1. The commission upon its own motion may investigate, and upon the verified complaint
29 in writing of any person, shall, investigate the activities of any licensee or any person
30 ~~who~~that assumes to act in such capacity within the state, and has the power to
31 suspend or revoke a license, impose a monetary fine and actual costs incurred by the

- 1 commission in the investigation and prosecution of the complaint, require course
2 attendance, or issue a letter of reprimand, or any combination thereof, ~~when~~if the
3 licensee, in performing or attempting to perform any of the acts included within the
4 scope of this chapter, has performed one or more of the following:
- 5 a. Making a material false statement in the licensee's application for a license or in
6 any information furnished to the commission.
 - 7 b. Making any substantial and willful misrepresentation with reference to a real
8 estate transaction which is injurious to any party.
 - 9 c. Making any false promise of a character such as to influence, persuade, or
10 induce a party to a real estate transaction to that person's injury or damage.
 - 11 d. Acting for more than one party in a transaction without the knowledge and
12 consent of all parties to that transaction for whom the licensee acts.
 - 13 e. ~~Failure~~Failing to account for or to remit, within a reasonable time, any moneys
14 coming into the licensee's possession belonging to others; commingling funds of
15 others with the licensee's own, failing to keep such funds of others in an escrow
16 or trust account with a bank or other recognized depository in this state, or
17 keeping records relative to the deposit, which must contain such information as
18 may be prescribed by the rules and regulations of the commission relative
19 thereto.
 - 20 f. ~~Been~~Being convicted or ~~pleaded~~pleading guilty or nolo contendere before any
21 court of any felony, or of a misdemeanor involving theft, forgery, embezzlement,
22 obtaining money under false pretenses, bribery, larceny, extortion, conspiracy to
23 defraud, or other similar offense. A certified copy of the record of conviction is
24 conclusive evidence of conviction in such cases.
 - 25 g. Claiming or taking of any secret or undisclosed amount of compensation or
26 commission or the failure of a licensee to reveal to the licensee's principal or
27 employer the full amount of ~~such~~the licensee's compensation or commission in
28 connection with any acts for which a license is required under this chapter.
 - 29 h. Failing or refusing upon demand to produce any document, book, or record in the
30 licensee's possession or under that person's control, concerning any real estate
31 transaction under investigation by the commission.

- 1 i. Offering real property for sale or lease without the knowledge and consent of the
2 owner or the owner's authorized agent or on any terms other than those
3 authorized by the owner or agent.
- 4 j. Refusing, because of race, color, national origin, ~~or ethnic group,~~religion, sex,
5 age, physical or mental disability, or status with respect to marriage or public
6 assistance to show, sell, lease, or rent any real estate to prospective renters,
7 lessees, or purchasers.
- 8 k. Failing or refusing upon demand to furnish copies of any document pertaining to
9 any transaction dealing with real estate to any person whose signature is affixed
10 ~~thereto~~to the document.
- 11 l. Paying compensation or commission in connection with any real estate sale,
12 lease, or other transaction to any person ~~who~~that is not licensed as a real estate
13 broker or real estate salesperson under this chapter.
- 14 m. Failing to disclose to an owner the licensee's intention or true position if the
15 licensee directly or indirectly through a third party purchases for the licensee or
16 acquires or intends to acquire any interest in or any option to purchase property
17 ~~which~~that has been listed with the licensee's office for sale or lease.
- 18 n. ~~Failure~~Failing to include a fixed date of expiration in any written listing agreement
19 and ~~failure~~failing to leave a copy of ~~such~~the agreement with the principal.
- 20 o. ~~Failure by a~~A broker failing to deliver to the party or parties represented by the
21 broker a complete detailed closing statement in every real estate transaction, at
22 the time ~~said~~the transaction is consummated, showing all of the receipts and
23 disbursements handled by ~~such~~the broker for the party or parties represented by
24 the broker, and to retain true copies of ~~such~~the statements in the broker's files.
- 25 p. Violating any provisions of this chapter or rule or regulation ~~promulgated~~adopted
26 by the commission.
- 27 q. ~~Violation of any provision of such realtor's code of ethics as the commission has~~
28 ~~or may promulgate and adopt.~~
- 29 r. Accepting a commission or valuable consideration as a real estate salesperson
30 for the performance of any of the acts specified in this chapter, or by rule or

1 regulation of the commission, from any person except the licensed real estate
2 broker under whom the individual is licensed as a salesperson.

3 ~~s.r.~~ If the licensee is a broker, allowing any unlicensed salesperson to do any act or
4 engage in any activity regulated by this chapter or under rule or regulation of the
5 commission, which is carried on in the name of or under the authority of the
6 broker.

7 ~~t.s.~~ ~~Failure of a~~A salesperson failing to place with that ~~person's~~salesperson's
8 employing broker for deposit in the brokerage trust account all real estate trust
9 moneys received by the salesperson within twenty-four hours of the time of
10 receipt; or failure of the employing broker to place ~~such~~the moneys for deposit
11 within twenty-four hours of the time of receipt from the salesperson. Provided that
12 if trust money is received on a day ~~prior to~~before a holiday or on another day
13 ~~prior to~~before which the depository is closed where the trust fund is maintained,
14 the moneys must then be deposited during the next business day of the
15 depository.

16 ~~u.t.~~ ~~Failure of the~~The licensee failing to reduce an offer to writing when a proposed
17 purchaser requests ~~that such~~the offer be submitted to the seller, or failure of the
18 licensee to submit all offers to a seller when ~~such~~the offers are received ~~prior~~
19 ~~to~~before the seller accepting an offer in writing and until the broker has
20 knowledge of ~~such~~the acceptance.

21 ~~v.u.~~ Any other conduct, whether of the same or of a different character than specified
22 in this subsection, which constitutes dishonesty or fraudulent conduct, whether
23 arising within or without the pursuit of that person's licensed privilege.

24 ~~w.v.~~ Any conduct ~~which~~that in the determination of the commission does not meet the
25 generally accepted standard of expertise, care, or professional ability expected of
26 real estate brokers or salespersons, provided that any disciplinary measures by
27 the commission under this subdivision must be limited to the issuance of a letter
28 of reprimand to the offending licensee.

29 2. If the commission declines or fails to approve an application submitted to ~~the~~the
30 commission, ~~the commission immediately~~ shall ~~immediately~~ give notice of that fact to
31 the applicant, and upon request from ~~such~~the applicant, filed within twenty days after

1 the receipt of such ~~the~~ notice, shall fix a time and place for hearing, of which twenty
2 days' notice must be given to such ~~the~~ applicant and to other persons interested or
3 protesting, to offer evidence relating to the application. In such cases the commission
4 shall fix the time for such hearing on a date within sixty days from receipt of the
5 request for the particular hearing, provided the time of hearing may be continued from
6 time to time with the consent of the applicant. As a result of such hearing, the
7 commission may ~~either~~ approve the application if all other applicable provisions of this
8 chapter have been met, and permit the applicant to take the examination to determine
9 whether the applicant ~~shall~~ must be licensed, or ~~if the commission~~ may sustain ~~its~~ the
10 commission's prior decision refusing to approve the application.

11 3. A license may not be revoked or suspended, a monetary fine or actual costs may not
12 be imposed, course attendance may not be required, nor any letter of reprimand
13 issued except after hearing before the commission with a copy of the charges having
14 been duly served upon the licensee and upon sustaining of the charges for
15 suspension, revocation, fine, payment of actual costs incurred, required course
16 attendance, or reprimand. The provisions of chapter 28-32 apply to and govern all
17 proceedings for suspension, revocation, fine, payment of actual costs incurred,
18 required course attendance, or reprimand of licenses or licensees.

19 4. In any order or decision issued by the commission in resolution of a disciplinary
20 proceeding in which disciplinary action is imposed against a licensee, the commission
21 may direct the licensee to pay a fine not to exceed ~~two thousand five hundred~~ five
22 thousand dollars and actual costs, including attorney's fees, incurred by the
23 commission in the investigation and prosecution of the case. All fines collected must
24 be deposited in the commission's license fee account.

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

27 **43-23-12. Broker's place of business - License of employed salesperson.**

28 1. Every ~~person~~ individual, partnership, association, corporation, or limited liability
29 company licensed as a real estate broker is required to have and maintain a definite
30 place of business within this state, for the transaction of real estate business, except
31 as provided in section 43-23-10. The ~~certificate of registration~~ license as broker and the

1 ~~certificate~~license of each real estate salesperson employed by such ~~licensee~~licensed under
2 ~~that~~ broker must be prominently displayed in said office or the licensee's name and
3 license number listed on the broker's website. The said place of business must be
4 designated in the license, and ~~no~~a license issued under the authority of this chapter
5 may not authorize the licensee to transact business at ~~any other address~~under any
6 other broker. In case of removal from the designated ~~address~~broker, the licensee shall
7 make application to the commission before ~~said~~the removal or within ~~ten~~five days after
8 ~~said~~the removal, designating the new location of such office, whereupon the
9 commission immediately shall ~~forthwith~~ issue a new license for the new location for the
10 unexpired period. The broker's home may qualify as ~~such~~the place of business.

- 11 2. All licenses issued to real estate salespersons shall must designate the
12 employer~~broker~~ of ~~such~~the salespersons. Prompt notice in writing, within ~~ten~~five days,
13 must be given to the commission by any real estate salesperson of a change of
14 employer~~broker~~, and of the name of the licensed broker into whose ~~employ~~supervision
15 the salesperson is about to enter, and a new license shall ~~thereupon~~must be issued by
16 the commission to ~~such~~the salesperson for the unexpired term of the original license,
17 upon the return to the commission of the license previously issued. The change of
18 employer ~~or employment~~broker by any licensed real estate salesperson, without notice
19 to the commission ~~as aforesaid~~, shall automatically ~~cancel~~cancel that person's
20 license. Upon termination of a real estate salesperson's ~~employment~~supervision by a
21 broker, the broker employer immediately shall ~~forthwith~~ return the salesperson's license
22 ~~to~~notify the commission ~~for cancellation~~in writing. It is unlawful for any real estate
23 salesperson to perform any of the acts contemplated by this chapter either directly or
24 indirectly after that person's ~~employment~~supervision by a broker has been terminated
25 and ~~license as a salesperson has been returned for cancellation~~, until ~~said~~the license
26 has been reissued by the commission to a new broker.

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

29 **43-23-13.1. License renewal.**

30 Every person licensed to practice as a real estate broker or real estate salesperson
31 ~~must~~shall register annually with the commission and pay the appropriate annual renewal fee as

1 provided in section 43-23-13. The application for renewal must be accompanied by such
2 certification as required by this chapter and rules of the commission to show compliance with
3 the educational requirements of sections 43-23-08 and 43-23-08.2, and ~~is to~~must be submitted
4 to the commission with the appropriate fee no later than the application deadline set by the
5 commission. A licensee ~~who~~that fails to file a timely application for the renewal of any license
6 and pay the renewal fee on or before the application deadline may file a late renewal
7 application, together with the required educational certification, before ~~March first~~January
8 fifteenth of the subsequent year and shall pay, in addition to the renewal fee, a late fee as set by
9 the commission for each month or fraction ~~thereof~~of a month after the application deadline. Any
10 license not renewed by ~~March first~~January fifteenth must be canceled. The cancellation must be
11 performed without any notice or opportunity for hearing. Any person whose license has been
12 canceled and ~~who~~which desires relicensure must be required to satisfy the application and
13 examination requirements for prospective licensees in accordance with this chapter and rules of
14 the commission.

15 ~~No~~A licensee may not engage in any activity after December thirty-first of any year for which
16 a license is required under this chapter unless that person's license has been renewed by the
17 commission.

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

20 **43-23-14.1. Handling of funds by brokers.**

21 Except as otherwise provided in this section, every broker ~~shall~~, at all times, shall maintain
22 in the broker's name or firm name, a separate, noninterest-bearing trust account designated as
23 such in a federally insured financial institution in this state in which the broker ~~shall~~ immediately
24 shall place as a demand deposit all funds not the broker's own coming into the broker's
25 possession, in accordance with rules adopted by the commission. This requirement extends to
26 funds in which the broker may have some future interest or claim and includes earnest money
27 deposits. ~~Provided, the deposit of funds may be made in an interest-bearing account in a~~
28 ~~federally insured bank, trust company, savings and loan association, or credit union if all parties~~
29 ~~having an interest in the funds have agreed in writing and if a copy of the agreement is~~
30 ~~maintained on file by the broker.~~ A broker may not commingle the broker's personal funds or
31 other funds in a trust account, except ~~that~~ a broker may deposit and keep a sum not to exceed

1 five hundred dollars in the account from the broker's personal funds, which sum must be
2 specifically identified and deposited to cover service charges related to the trust account. In
3 conjunction with the account, the broker shall maintain at the broker's usual place of business,
4 books, records, contracts, and other necessary documents so that the adequacy of the account
5 may be determined at any time. Trust accounts and other records must be open to inspection
6 by the commission and ~~its~~the commission's duly authorized agents at all times during regular
7 business hours at the broker's usual place of business.

8 A broker ~~who~~that does not accept trust funds in real estate brokerage transactions and
9 ~~who~~which has applied for and received a waiver from the real estate commission is not required
10 to maintain a designated trust account. However, if a broker does not maintain a trust account
11 and later receives trust funds in a real estate brokerage transaction, the broker shall open a
12 designated trust account as required by this section and deposit any trust funds in accordance
13 with rules adopted by the commission. A broker shall maintain a record tracking the earnest
14 money associated with all transactions even if the funds are deposited directly with the title
15 company and the broker does not take possession of the funds.

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

18 **43-23-16. Licensee list.**

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

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

28 **43-23-19. Errors and omissions insurance required of salespersons and brokers -**
29 **Rules.**

30 The real estate commission shall adopt rules pursuant to chapter 28-32 requiring as a
31 condition of licensure that, ~~effective January 1, 2002, and thereafter,~~ all real estate

1 salespersons and brokers, except those ~~whewhich~~ hold inactive licenses, carry errors and
2 omissions insurance covering all activities contemplated under this chapter.

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

5 **43-23.1-14. ~~Cease and desist orders~~Orders.**

6 1. ~~If~~The commission may issue an order requiring a person to cease and desist from the
7 unlawful practice and to take such affirmative action as in the judgment of the
8 commission will carry out the purposes of this chapter if the commission determines
9 after notice and hearing that a person has:

- 10 a. Violated any provision of this chapter;
- 11 b. Directly or through an agent or employee knowingly engaged in any false,
12 deceptive, or misleading advertising, promotional, or sales methods to offer or
13 dispose of an interest in subdivided lands;
- 14 c. Made any substantial change in the plan of disposition and development of the
15 subdivided lands ~~subsequent to~~after the order of registration without obtaining
16 prior written approval from the commission;
- 17 d. Disposed of any subdivided lands ~~which~~that have not been registered with the
18 commission; or
- 19 e. Violated any lawful order or rule or regulation of the commission;

20 ~~it may issue an order requiring the person to cease and desist from the unlawful~~
21 ~~practice and to take such affirmative action as in the judgment of the commission will~~
22 ~~carry out the purposes of this chapter.~~

23 2. If the commission makes a finding of fact in writing that the public interest will be
24 irreparably harmed by delay in issuing an order, ~~it~~the commission may issue a
25 temporary cease and desist order. ~~Prior to issuing the temporary cease and desist~~
26 ~~order, the commission, whenever possible, by telephone or otherwise shall give notice~~
27 ~~of the proposal to issue a temporary cease and desist order to the person. Every~~
28 ~~temporary cease and desist order must include in its terms a provision that upon~~
29 ~~request a hearing will be held promptly to determine whether or not it becomes~~
30 ~~permanent~~commence an action in the district court of the county in which the act or
31 practice occurred for an injunction to enforce compliance with this chapter. The

1 commission is not required to give any bond for commencing this action. Upon a
2 showing of a violation the district court may enjoin the act or practice and may make
3 any order necessary to conserve, protect, and disburse any funds involved.

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

6 **43-23.2-02. Fees paid into fund.**

- 7 1. In addition to the appropriate licensing fees paid by real estate brokers and
8 salespersons, ~~each person licensed for the calendar year 1976 as a real estate broker~~
9 ~~or salesperson shall pay, at the time of application for such license, a separate fee in~~
10 ~~the amount of twenty dollars which must be credited into the education, research, and~~
11 ~~recovery fund. Each person so licensed for the calendar year 1977 shall pay a like fee~~
12 ~~in the amount of twenty dollars which must be credited into the fund. Thereafter, any~~
13 ~~person who is licensed as a real estate broker or salesperson for the first time, either~~
14 ~~for the calendar year 1978 or for a subsequent calendar year, shall pay a fee of twenty~~
15 ~~dollars at the time of obtaining such~~the ~~license which must be credited into the~~
16 education, research, and recovery fund. Except for assessments paid into the fund as
17 provided in subsection 2, any person obtaining a broker's or salesperson's license for
18 the first time ~~which becomes effective for the calendar year 1978 or for a subsequent~~
19 ~~calendar year, shall pay the fee of twenty dollars into the fund only once.~~
- 20 2. If, on June thirtieth of any year, following the establishment of the real estate
21 education, research, and recovery fund, the amount remaining in the fund is less than
22 sixty thousand dollars, every licensed real estate broker and salesperson, when
23 renewing that ~~individual's~~person's license, shall pay, in addition to the annual renewal
24 fee, a sum not to exceed twenty dollars, which must have been determined by the
25 commission to be sufficient to restore the balance in the fund to at least sixty thousand
26 dollars.
- 27 3. The commission shall maintain a minimum of sixty thousand dollars in the fund for
28 recovery purposes. Such funds must be invested and reinvested by the commission
29 and interest from ~~said~~the investments must be deposited to the credit of the fund.
30 Sufficient liquidity must be maintained so ~~that~~ moneys are available to satisfy all

1 claims ~~which~~that are processed through the commission by means of the procedures
2 established in this chapter.

3 4. The commission, in ~~its~~the commission's discretion, may use any moneys in the fund in
4 excess of sixty thousand dollars, regardless of whether ~~it~~the excess is from education,
5 research, and recovery fund fees or accrued interest thereon, for the following
6 purposes:

7 a. To promote the advancement of education and research in the field of real estate
8 for the benefit of those licensed under chapter 43-23.

9 b. To underwrite educational seminars and other forms of educational projects for
10 the benefit of real estate licensees.

11 c. To establish a real estate chair or courses at North Dakota institutions of higher
12 learning for the purpose of making such courses available to licensees and the
13 general public.

14 d. To contract for a particular educational or research project in the field of real
15 estate to further the purposes of chapter 43-23.

16 5. The executive director of the commission shall furnish a bond in the amount of sixty
17 thousand dollars, upon such conditions as the commission may prescribe.

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

20 **43-23.2-03. Claims against fund - Orders for payment.**

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

1 and must be served on the commission and upon the judgment debtor and an affidavit of
2 service filed with the court.

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