



North Dakota Association of REALTORS®

To advocate for the success of our members in partnership with our local Associations and the National Association of REALTORS®

**TESTIMONY IN FAVOR OF HB 1258**  
**March 3, 2021**  
**SENATE INDUSTRY, BUSINESS AND LABOR**

Chairman Klein and Members of the Senate Industry, Business and Labor Committee, for the record my name is Jill Beck and I represent the North Dakota Association of REALTORS® (NDAR).

The North Dakota Association of REALTORS® represents more than 2,100 REALTORS® and more than 250 Business Partner members.

NDAR worked closely in reviewing the real estate license law as well as rules and regs of real estate with the North Dakota Real Estate Commission. For clarification the North Dakota Real Estate Commission is the state licensing authority and the North Dakota Association of REALTORS® is the member organization. Those that belong to our organization are bound by a Code of Ethics and can use the term REALTOR® vs. the generic real estate licensee.

While the majority of the bill deals with clean-up and modernization of language that Jeanne covered, I would like to touch on the last part of the bill that requests repeal of Chapter 43-23.4 REAL ESTATE BROKER TRUST ACCOUNTS (or known as RETA). This section was created in 1991 and was modeled after the interest on Lawyers Trust Accounts. I have attached a copy of this for your reference.

While this falls under license law which is under the jurisdiction of the North Dakota Real Estate Commission, the North Dakota Association of REALTORS was asked to manage the program at the onset. The program requires that the real estate brokers trust accounts be interest bearing (there is room for exemptions) and this money is then used to grant money to 501(c)3 organizations.

In the early years, when interest rates were higher (10+%) the program was earning \$30,000 to \$40,000 a year in interest payments and granting money to tax exempt public organizations of similar amounts. By law the RETA Committee, by grants and appropriations it determines appropriate, shall disburse funds solely for:

- A) Providing housing and shelter to the homeless and poor.
- B) Providing public education relating to needs of housing for the poor
- C) Improving available safe and decent housing

Due to several factors the interest being remitted from brokers trust accounts by banks is now very nominal. The number one factor of course is low interest rates – most banks are at less than 1% with majority half of that or less and also in the last five to ten years more brokers are having the title companies hold their earnest money and there is no interest earned on those accounts.

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The following graphics and charts will give some history of RETA program and why we are asking for the repeal of the program. These were reviewed during our discussions on how to move forward with this program.

As you can see from Chart A the proceeds after paying expenses, which include a minimal management fee from the ND REALTORS that doesn't even cover our time and resources, there is very little remaining to pay out in grants.

Chart A:

<b>RETA Profit/Loss</b>			
<b>Year</b>	<b>Income</b>	<b>Expenses</b>	<b>Net Income</b>
2020	\$ 5,833.24	\$ 5,012.01	\$ 821.23
2019	\$ 7,413.26	\$ 5,505.99	\$ 1,907.27
2018	\$ 5,625.23	\$ 5,012.00	\$ 613.23
2017	\$ 2,917.98	\$ 5,030.00	\$ (2,112.02)
2016	\$ 3,441.56	\$ 5,000.00	\$ (1,558.44)
2015	\$ 3,673.23	\$ 5,000.00	\$ (1,326.77)
2014	\$ 5,161.01	\$ 5,006.00	\$ 155.01
2013	\$ 5,346.51	\$ 5,006.00	\$ 340.51
2012	\$ 9,787.87	\$ 5,030.00	\$ 4,757.87
2011	\$ 5,026.60	\$ 5,024.00	\$ 2.60
2010	\$ 5,056.44	\$ 5,030.00	\$ 26.44
2009	\$ 6,541.08	\$ 4,994.43	\$ 1,546.65
2008	\$ 16,090.48	\$ 5,000.00	\$ 11,090.48
2007	\$ 16,642.60	\$ 22,198.49	\$ (5,555.89)
2006	\$ 13,863.95	\$ 7,006.00	\$ 6,857.95

15 years = \$ 17,566.12

Chart B shows the amount of checks we receive and I can attest that we get many that are ten cents or below from banks. Sixty percent of the checks we deposited in 2020 were less than a \$1.00. Remember that most banks have more than one brokers trust account at their institution so these checks are for more than one account and we receive checks as well as bank transfers for less than five cents. By eliminating the program there will be time and cost savings to banks, the management of the program by us as well as the North Dakota Real Estate Commission who

reviews this as part of the audits they do of brokers. As long as there were grants being paid out it overshadowed the work being put into managing the program.

Chart B:

<b>RETA Account Deposits/Checks</b>	
Less than \$1	492
<b>Total</b>	<b>814</b>
	<u>60%</u>
Less than \$2	561
<b>Total</b>	<b>814</b>
	<u>69%</u>
Less than \$5	621
<b>Total</b>	<b>814</b>
	<u>76%</u>
Less than \$10	691
<b>Total</b>	<b>814</b>
	<u>85%</u>

Over the years we have awarded grants in the amount of \$223,285 with the last grant awarded ten years ago in 2010.

43-23.4-05 covers how funds will be distributed upon dissolution of the RETA program. Currently there is approximately \$39,000 of funds in the RETA program.

I also want to address that our organization, which is made up of seven local boards around the state are very community oriented and are very involved in charitable organizations and offer much support. When some agencies are feeling a need they often times turn to the REALTOR® organization as they know we can react quickly and get their needs met.

I ask for your support for HB 1258 and would be happy to answer any questions you may have now or my contact info is below as well.

**Jill Beck, CEO**  
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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 4% 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 4% 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 43-23.4

### REAL ESTATE BROKER TRUST ACCOUNTS

#### Section

<b>43-23.4-01</b>	<b>Real Estate Trust Account Committee</b>
<b>43-23.4-02</b>	<b>Powers and Duties of the Committee</b>
<b>43-23.4-03</b>	<b>Officers</b>
<b>43-23.4-04</b>	<b>Director</b>
<b>43-23.4-05</b>	<b>Disposition of Funds Upon Dissolution</b>
<b>43-23.4-06</b>	<b>Preserving Identity of Funds and Property of a Client</b>

**43-23.4-01. Real estate trust account committee.** The president of the North Dakota association of realtors, with the approval of the board of directors of the association, shall appoint a 5 member real estate trust account committee. 3 members must be realtors in this state who are members of the association and licensed to practice real estate in this state. The remaining 2 members may not be realtors. The term of office for members is 3 years, except that, as determined by lot, 1 realtor member first appointed shall serve for an initial term of 1 year, and 1 realtor member and 1 nonrealtor member first appointed shall serve an initial term of 2 years. No member may serve more than 2 successive 3-year terms. Each

member shall serve until a successor is appointed. A vacancy on the committee must be filled by appointment of a member to serve for the unexpired portion of the term. Members of the committee serve at the pleasure of the board of directors of the association.

**43-23.4-02. Powers and duties of the committee.**

1. The real estate trust account committee shall implement and administer an interest on the broker trust account program.
2. The committee is the sole recipient of the interest or dividends paid from real estate interest-bearing trust accounts under the broker trust account program. Upon receipt of the funds, the committee shall make appropriate temporary investments of the funds pending disbursement of the funds.
3. The committee, by grants and appropriations it determines appropriate, shall disburse funds solely for:
  - a. Providing housing and shelter to the homeless and poor.
  - b. Providing public education relating to needs of housing for the poor.
  - c. Improving available safe and decent housing.
4. No funds may be disbursed for any purpose other than tax-exempt public purposes permitted under section 18 of article X of the Constitution of North Dakota, and section 501(c)(3) of the Internal Revenue Code.
5. The real estate trust account committee shall maintain adequate records reflecting all transactions arising with respect to income from and disbursements of the interest on real estate trust accounts.
6. Within 180 days after July 1, 1991, the committee shall adopt rules establishing guidelines and procedures for the operation of an interest on the real estate trust account program, including:
  - a. Guidelines for identifying eligible applicants.
  - b. Procedures for submitting grant applications.
  - c. Guidelines for awarding grant applications.
  - d. Procedures for accounting for the expenditure of grant funds by the recipient.Upon becoming effective, the guidelines and procedures are the basis for the administration of the disbursement of the funds by the committee.
7. Immediately after July 1, 1991, the real estate trust account committee shall take any action necessary to obtain permission from the federal reserve system, federal home loan bank board, and federal deposit insurance corporation to use negotiable order of withdrawal accounts for the deposit of funds of clients or third persons held by a broker in connection with a representation or transaction.
8. The real estate trust account committee shall adopt rules establishing guidelines and procedures that provide for an exemption from interest-bearing trust accounts requirements when the cost of maintaining an interest-bearing trust account exceeds any potential interest earnings.

**43-23.4-03. Officers.** The president of the board of directors of the North Dakota association of realtors, with the approval of the board, shall appoint a chairman and vice chairman of the real estate trust account committee. The committee may elect other officers as it deems appropriate and may specify their duties.

**43-23.4-04. Director.** The real estate trust account committee may appoint an executive director of the real estate trust account committee on a full-time or part-time basis at the pleasure of the board. The executive director is entitled to receive compensation set by the committee. The executive director, before entering upon the duties of the office, may be required to provide a surety bond in an amount determined by the committee. The executive director is responsible and accountable to the committee for the proper administration of this

chapter. The executive director may employ persons or expend money for services approved by the committee.

**43-23.4-05. Disposition of funds upon dissolution.** Upon dissolution of the organization, assets must be distributed for 1 or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or to such entities organized and operated exclusively for charitable, educational, religious, or scientific purposes under section 501(c)(3) of the Internal Revenue Code. Any assets not so disposed of must be disposed of by a court of competent jurisdiction of the county in which the principal office of the organization is located exclusively for charitable, educational, religious, or scientific purposes.

**43-23.4-06. Preserving identity of funds and property of a client.**

1. All funds of clients paid to a real estate broker, including advances for costs and expenses, must be deposited in 1 or more identifiable interest-bearing trust accounts maintained as required by section 43-23-14.1.
2. Each real estate broker's trust account must be an interest-bearing trust account in a bank, savings bank, trust company, savings and loan association, savings association, credit union, or federally regulated investment company authorized by federal or state law to do business in this state and insured by the federal deposit insurance corporation, the national credit union share insurance fund, or the federal savings and loan insurance corporation, and selected by the broker in the exercise of ordinary prudence unless otherwise agreed upon by the parties to the real estate transaction as provided by rule by the real estate commission. Interest-bearing trust funds must be placed in accounts in which withdrawals or transfers may be made by the depositing broker or realty firm without delay, subject only to any notice period that the depository institution is required to reserve by law or regulation.
3. The broker shall direct the depository institution to:
  - a. Remit interest or dividends, minus any service charges or fees to the brokers or depository institution, on the average monthly balance in the account, or as otherwise computed in accordance with an institution's standard accounting practice, at least quarterly, to the real estate trust account committee;
  - b. Transmit with each remittance to the committee a statement showing the name of the broker or real estate firm for which the remittance is sent, the rate of interest applied, the amount of any service charges deducted, the account balance of the period in which the report is made; and
  - c. Transmit a copy of the statement to the depositing broker.
4. Every licensed real estate broker shall maintain on a current basis, records sufficient to demonstrate compliance with the laws and rules governing the interest-bearing trust account activities.