

Sixty-ninth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1125

Introduced by

Representative Louser

1 A BILL for an Act to amend and reenact sections 43-23-06.1, 43-23-08, 43-23-13.1, and
2 43-23-24 of the North Dakota Century Code, relating to real estate licensing.

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 that has entered a written agency agreement with a real
12 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 6. "Dual agency" means a situation in which a real estate brokerage firm or 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.

"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.

- 1 g. Advertises or holds out as being engaged in the business of buying, selling,
2 exchanging, or leasing of real estate or any interest in that real estate, or any
3 improvements on that real estate.
- 4 h. Assists or directs in the procuring of prospects or refers a prospect, calculated to
5 result in the sale, exchange, or leasing of real estate or any interest in that real
6 estate, or any improvements on that real estate. A licensed broker in this state
7 may divide or share a real estate commission with a licensed broker in another
8 state if the out-of-state broker does not carry on any of the negotiations in this
9 state either by physically entering the state or by communicating with the broker
10 electronically or through other means.
- 11 i. Publicly markets for sale an equitable interest in a contract for the purchase of
12 real property between a property owner and a prospective purchaser.
- 13 10. "Real estate brokerage firm" means a person that is providing real estate brokerage
14 services through that person's licensees and which is licensed by the commission as a
15 real estate brokerage firm.
- 16 11. "Real estate salesperson" means any person that for a fee, compensation, salary, or
17 other consideration, or in the expectation or upon the promise of that compensation, is
18 employed or engaged by a licensed real estate broker to do any act or deal in any
19 transaction as provided in subsection 9 for or on behalf of such licensed real estate
20 broker.

21 **SECTION 2. AMENDMENT.** Section 43-23-08 of the North Dakota Century Code is
22 amended and reenacted as follows:

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

- 24 1. Licenses and license renewals may be granted only to persons who bear a good
25 reputation for honesty, truthfulness, and fair dealing and who are competent to
26 transact the business of a real estate broker or a real estate salesperson in such
27 manner as to safeguard the interest of the public, and whose real estate license has
28 not been revoked in this or any other state within two years before the date of
29 application. To determine the competency of applicants, the commission shall
30 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 or broker'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.

SECTION 3. AMENDMENT. Section 43-23-13.1 of the North Dakota Century Code is amended and reenacted as follows:

43-23-13.1. License renewal.

1. Every person licensed to practice as a real estate broker or real estate salesperson shall register ~~annually~~ with the commission at a regular interval set by the commission not less than annually 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 set by the commission may file a late renewal application, together with the required educational certification, ~~before January fifteenth of the subsequent year~~ on or before a date set by the commission 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~~ the late renewal date set by the commission 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.
2. A licensee may not engage in any activity after ~~December thirty-first~~ the license renewal date set by the commission of any year for which a license is required under this chapter unless that person's license has been renewed by the commission.

SECTION 4. AMENDMENT. Section 43-23-24 of the North Dakota Century Code is amended and reenacted as follows:

43-23-24. Wholesale buyers and sellers - Disclosure.

1. As used in this section:
 - a. ~~"Residential real property" means real property with fewer than five dwelling units.~~

b. ~~1. "Wholesaler~~wholesaler" means a person that enters an agreement to make income or profit from the transfer of or equitable interest in ~~residential~~ real property.

2. A wholesaler of ~~residential~~ real property shall disclose in writing to all parties to the agreement that the wholesaler holds an equitable interest in the property, may not be able to convey title to the property, and intends to make a profit or income from the transfer of the equitable interest.

3. Notwithstanding any other provision contained in a contract for sale of ~~residential~~ real property, if a wholesaler violates this section, the seller may cancel the contract for sale at any time before the close of escrow without penalty and may retain any earnest money paid by the wholesaler.

4. Notwithstanding any other provision contained in the contract for sale, if a wholesaler violates this section, the buyer may cancel the contract for sale at any time before the close of escrow without penalty and must be refunded all earnest money paid by the buyer.