ARTICLE 70-02
REAL ESTATE LICENSURE

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CHAPTER 70-02-01
LICENSING, TRUST ACCOUNTS, AND COMPLAINTS

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70-02-01-01. Application and purpose of title.

1. This title applies in all proceedings and hearings had before the commission in matters within its jurisdiction, except in cases where the statute involved provides a procedure inconsistent with this title, and in such case the statute shall govern to the extent of such inconsistency.

2. It is the purpose of this commission, acting under the provisions of the law creating it, to safeguard the public interest in real estate transactions, to regulate the licensing of real estate brokers and salespersons, to encourage and require the maintenance of high standards of ethics and practices by all real estate licensees doing business in North Dakota.

History: Amended effective January 1, 1992; July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-11.1(3)
Law Implemented: NDCC 43-23-02

70-02-01-02. Application for license.

1. No application for either a broker's or salesperson's license will be accepted from a person under the age of eighteen years.

2. All applications must be filed with the commission before an examination, complete in every detail with every question answered and correct fees submitted.

3. It shall be incumbent upon the applicant for a real estate broker's license to submit the applicant's proofs of qualification pursuant to subsection 3 of North Dakota Century Code section 43-23-08. Broker applicants wishing to qualify under the two-year experience requirement shall be required to submit to the commission a letter from said applicant's broker or brokers that the applicant has been actively engaged in the real estate business as a salesperson for at least two years.

   "Actively engaged" means that the applicant must have devoted the applicant's full time as a licensed real estate salesperson. The foregoing shall be certified by a licensed real estate broker.

4. Each application for license shall be made on application forms provided by the real estate commission.

5. After an application is filed, no refund of application fee will be made to any applicant.

6. The commission may deny any application for license when one or more of the following conditions are present:

   a. The application contains any false statement.

   b. An investigation fails to show affirmatively that the applicant possesses in every instance the necessary qualifications.

   c. The applicant has acted or attempted to act in violation of North Dakota Century Code chapter 43-23 or this title.

   d. The applicant has had a real estate license suspended or revoked in North Dakota or another state.

   e. The applicant has issued one or more checks or drafts which have been dishonored by a payor bank because:

      (1) No account exists;

      (2) The account was closed; or

      (3) The account did not contain sufficient funds to pay the check or draft in full upon its presentment.

   f. The applicant's credit history shows the existence of unpaid and overdue judgments, liens, or other debt obligations which, for the protection of the public, requires that the application be denied.

7. If the application and supporting documents on their face show that the applicant is qualified, but from complaints and information received or from investigation it shall appear to the commission at any time before the initial license is delivered, that there may be cause to deny a license, the commission may order a hearing to be held to consider such complaints or information.

8. The commission may require such other proof as may be deemed advisable of the honesty, truthfulness, and good reputation of any applicant, including the officers and directors of any corporation, or the members of any copartnership or association making such application, before accepting an application for license.

9. Inquiry and investigation may be made by the commission as to the financial responsibility of each applicant.

10. When a corporation submits its application for a license, the application must be accompanied by a copy of the articles of incorporation and a certificate of authority issued by the secretary of state.

11. When a partnership submits its application for a license, the application must be accompanied by a copy of the partnership agreement.

12. An applicant for licensure in another state may request the commission to certify to such other state that the applicant is a licensee of this state. A fee as set by the commission shall accompany the request.

13. An application for an organization to be licensed for a salesperson, broker associate, or broker pursuant to North Dakota Century Code section 43-23-05.1 must be accompanied by a one-time license fee of not more than three hundred dollars, as set by the commission. The individual who owns the organization must possess and maintain a valid and active real estate license in order for the organization to be licensed. The failure to do so will cause the organization's license to become inactive and invalid. The fee must be paid each time the organization's license is activated.

History: Amended effective August 1, 1981; May 1, 1986; January 1, 1992; February 1, 2004; January 1, 2006; April 1, 2008; July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-08(6)
Law Implemented: NDCC 43-23-05.1, 43-23-08, 43-23-09, 43-23-11.1

70-02-01-03. Examinations.

1. An applicant will not be permitted to take the examination until and unless the applicant has been authorized in writing to take the examination.

2. If an applicant should fail to take the examination within four months after notification by the commission that the applicant is qualified to take the examination, an applicant must submit a new application together with fees.

3. During the examination the use or possession of any unfair methods or notes, the giving or receiving of aid of any kind, or the failure to obey instructions will result in a denial of the application and license.

4. If the salesperson applicant passes one portion of the examination, national or state, the salesperson applicant shall not be required to repeat that portion of the examination if that applicant passes the remaining portion within twelve months from the date of the first examination. An applicant must submit a new application with fees if the examination has not been passed within the same twelve-month period.

5. A broker applicant must pass the broker examination within twelve months from the date of the first examination. An applicant must submit a new application in complete detail together with the statutory fees if the examination has not been passed within the same twelve-month period.

6. A prelicensure course is valid for two years from the date the applicant completed the course, as indicated on the certificate of completion or other official documentation provided by the school.

History: Amended effective January 1, 1992; February 1, 2004; April 1, 2008; July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-08, 43-23-11.1(3)

Law Implemented: NDCC 43-23-13(4)

70-02-01-04. Renewal of license.

All licenses expire on December thirty-first of each year. Persons desiring to continue in business must make proper application for renewal on or before November fifteenth of each year in order for the respective license to be renewed on a timely basis for the following license period. Failing to do this subjects such persons to loss of the right to charge a commission and also prosecution for doing business without a license after December thirty-first. Any person whose license has been canceled for failure to renew the person's license when due must submit a new application with the fees and pass the examinations to be licensed again. No license renewal fees are refunded after the beginning of the new license year if a licensee cancels their license or is deceased.

History: Amended effective October 1, 2015; July 1, 2022.
General Authority: NDCC 43-23-08, 43-23-08.2, 43-23-11.1(3)
Law Implemented: NDCC 43-23-13(4)

70-02-01-05. Inactive licenses.

1. A qualified licensed salesperson desiring to place the salesperson's license on an inactive status may do so by a request from the salesperson in a format prescribed by the commission that the salesperson's license be placed on an inactive status. The salesperson may keep the salesperson's license on an inactive status for an indefinite period. The salesperson placing the salesperson's license on inactive status shall pay the required fee for renewing such salesperson's license each year. A salesperson whose license is in an inactive status shall not engage in any manner in any of the activities described under North Dakota Century Code chapters 43-23 and 43-23.1, until the salesperson shall first request that the salesperson's license be reactivated by the commission. During the time that a salesperson's license is on an inactive status educational requirements do not need to be met. However, if any applicable education requirements are unsatisfied, proof of fulfillment must be submitted before the license can be reissued on an active status.

2. A qualified licensed broker who desires to place the broker's license on an inactive status may do so in a format prescribed by the commission that requests the license be placed on an inactive status. The broker may keep the broker's license on an inactive status for an indefinite period. The broker placing the broker's license on inactive status shall pay the required fee for renewing such broker's license each year. During the time that a broker's license is on an inactive status educational requirements do not need to be met. However, if any applicable education requirements are unsatisfied, proof of fulfillment must be submitted before the license can be reissued on an active status.

3. While a license is on inactive status it is not necessary, in the case of a broker, to maintain an active trust account. While a license is on inactive status, in the case of a designated broker, the firm license is automatically canceled unless another broker is the designated broker. A firm license that is canceled may be activated only by submitting a firm license application with all fees.

4. To reactivate an inactive license, a licensee must meet the continuing education hours as required by section 70-02-04-02 for each continuing education period the licensee's license was inactive, not to exceed the number of hours required for the three continuing education periods prior to reactivation. The requirements of section 70-02-04-02 must have been fulfilled within the three years immediately preceding the return to active status.

History: Amended effective May 1, 1986; January 1, 1992; February 1, 2004; July 1, 2010; July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-08(6)

Law Implemented: NDCC 43-23-08, 43-23-08.2

70-02-01-06. Nonresident brokers and salespersons.

1. Any person who becomes an applicant for a nonresident license shall become subject to the same rules required of an applicant whose residence is in North Dakota. A designated broker shall obtain a nonresident license before an associate broker or salesperson licensed under the designated broker can be issued a nonresident license.

2. An applicant for nonresident broker's or salesperson's license shall hold a currently valid broker's or salesperson's license in the state of the applicant's principal place of business and that state shall certify that the applicant is in good standing and no complaints are pending.

3. A nonresident broker must maintain an active place of business as a real estate broker in the state of the broker's principal place of business. The nonresident broker shall furnish proof of maintaining an active place of business by submitting information deemed necessary by the commission. A North Dakota firm license shall be obtained if the company is a partnership, corporation, limited liability company, or association.

4. North Dakota will not recognize the licensee from another state for a reciprocal license unless an agreement granting reciprocal privileges to North Dakota licensees has been made by the commission with the proper regulatory authorities of that state. The agreement shall set out the terms and the regulations to be followed.

5. An applicant currently licensed in a nonreciprocal state who has successfully passed the real estate licensing examination given in another state need only take the state portion of the examination in North Dakota. Prelicensure course is not required if the applicant is already licensed in another nonreciprocal state.

History: Amended effective May 1, 1986; January 1, 1992; April 1, 2008; October 1, 2015; July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-08(6)
Law Implemented: NDCC 43-23-10

70-02-01-07. Licensee's duties upon release of license due to cancellation, transfer, suspension, or revocation.

Upon release of license or upon notice of suspension, revocation, or cancellation of the license, the designated broker shall destroy the license and remove the licensee's name and licensee's number from the broker's website. If the license is that of a broker, the broker shall also release all licensees associated with the broker. No refund will be made upon any license when released.

History: Amended effective January 1, 1992; February 1, 2004; July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-08, 43-23-11.1(3)
Law Implemented: NDCC 43-23-11.1

70-02-01-08. Salesperson and broker associate transfer or release.

When for any reason a licensee severs connection with the licensee's designated broker and desires to transfer to another broker, the licensee must complete a transfer and release form provided by the commission, to be executed by the licensee, the licensee's current broker, and the licensee's new broker. Should the licensee's current broker not be agreeable to the transfer or release, the current broker then shall have the right to state the broker's reasons for refusal. Unless there is sufficient justification, the license will be transferred pending the receipt of the transfer form and fee.

History: Amended effective May 1, 1986; January 1, 1992; July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-08, 43-23-11.1(3)

Law Implemented: NDCC 43-23-12(2), 43-23-13(6), 43-23-13(7)

70-02-01-09. Broker associates.

A real estate broker who does not have an office under the broker's own name, but is affiliated with another licensed broker and performs service similar to that of a salesperson, must not at any time act independently as a broker, and shall not perform any real estate service without full consent and knowledge of the broker's supervising broker. The designated broker shall at all times be responsible for the action of the affiliated broker associate to the same extent as though the affiliated broker were an affiliated salesperson.

History: Amended effective January 1, 1992; July 1, 2022.
General Authority: NDCC 43-23-11.1(3)
Law Implemented: NDCC 43-23-06.1(5)

70-02-01-10. Salesperson.

A salesperson shall not commence work until the salesperson's broker receives notification of licensure from the commission. Any licensee leaving a broker shall not take nor use any agreements secured through the office or through licensees of the former broker unless specifically authorized by the former broker. All materials and records that belong to the former broker shall be returned to the former broker.

History: Amended effective January 1, 1992; February 1, 2004; July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-08, 43-23-11.1(3)
Law Implemented: NDCC 43-23-12(2)

70-02-01-11. Branch office.

1. **Definition.** If a broker maintains more than one office, then one office shall be designated as the main office and each additional office shall constitute a branch office. If a real estate broker maintains a regular office, the broker's home shall not be considered a branch office.

2. **Applications.** The broker desiring to open a branch office shall file with the commission an application for a branch office license on forms provided by the commission.

3. **Supervision.** The applicant broker must designate the applicant broker or another licensee to act as branch office manager to aid the broker in actively managing each branch office and to aid the broker in supervising the licensees working from such branch office. The designated licensee shall be responsible for all activities of that branch office. The applicant broker may designate the applicant broker to act as manager for all branch offices.

4. **Notification to commission of change.** It shall be the responsibility of the applicant broker to notify the commission in writing of any change of address of a branch office or change of supervisor of the branch office, within five days after the change.

5. **Notification to commission.** The applicant broker shall at all times notify the commission of the location and address of each branch office which the broker operates and the name of the licensee who supervises the branch office.

6. **Additional office.** Every additional office or place of business, other than the principal place of business of a broker, shall be licensed only with the approval of the commission and only after the applicant broker has given satisfactory proof that this additional office shall be under the supervision of a duly authorized licensee.

7. **Display license.** A branch license shall be displayed in the branch office or listed on the broker's website, shall bear the address of the branch office, and shall bear the name of the licensee designated to actively manage the branch office.

8. **Identical name.** The branch office must be operated under the same name as the principal office.

History: Amended effective December 1, 1999; July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-08, 43-23-11.1(3)
Law Implemented: NDCC 43-23-12, 43-23-13(5)

70-02-01-12. Sharing office space.

It shall be acceptable for more than one broker to operate in an office at the same address if each broker maintains all records and trust accounts separate from all other brokers. Each broker shall operate under a business name which clearly identifies the broker as an individual broker within the group of brokers.

General Authority: NDCC 43-23-11.1(3)
Law Implemented: NDCC 43-23-12(1), 43-23-14.1

70-02-01-13. Prevention of same or deceptively similar real estate firm names.

The commission within its discretion may prevent a real estate firm from using the same name or a name deceptively similar to that of a real estate firm already in the community if the commission determines that the interests of the public are thereby endangered.

General Authority: NDCC 43-23-11.1(3)
Law Implemented: NDCC 43-23-12(1)

70-02-01-14. Salesperson closing.

A salesperson shall not handle the closing of any real estate transaction (unless authorized by the salesperson's broker), except under the direct supervision of the broker, a licensed officer, or a licensed partner of the corporation or partnership under whom the salesperson is licensed.

History: Amended effective January 1, 1992; July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-08, 43-23-11.1(3)
Law Implemented: NDCC 43-23-11.1(1)

70-02-01-15. Trust account requirements - Handling of funds - Records.

1. All moneys belonging to others and accepted by the broker while acting in the capacity as a broker shall be deposited in a federally insured financial institution in this state in an account separate from money belonging to the broker. Clients' funds shall be retained in the depository until the transaction involved is consummated or terminated, at which time the broker shall account for the full amounts received.

    a. Name of account. The name of such separate account shall be identified by the words "trust account" or "escrow account".

    b. Notification. Each broker shall notify the commission of the name of the institution in which the trust account or accounts are maintained and also the name of the accounts on forms provided therefore. A new form shall be filed with the commission each time a broker changes the real estate trust account in any manner whatsoever, including change of depository, change of account number, change of business name, or change

of method of doing business. The form shall be filed with the commission within ten days after the aforementioned change takes place.

c. Authorization. Each broker shall authorize the commission to examine and audit the trust account and shall complete an authorization form attesting to the trust account and consenting to the examination and audit of the account by a duly authorized representative of the commission.

d. Commingling prohibited. Each broker shall only deposit trust funds received on real estate transactions in the broker's trust account and shall not commingle the broker's personal funds or other funds in the trust account with the exception that a broker may deposit and keep a sum not to exceed five hundred dollars in the account from the broker's personal funds which sum shall be specifically identified and deposited to cover service charges relating to the trust account.

e. Number of accounts. A broker may maintain more than one trust account provided the commission is advised of the account.

f. Time of deposit. Each broker shall deposit all real estate trust money received by the broker or the broker's salesperson in the trust account within twenty-four hours of receipt of the money by the broker or the salesperson unless otherwise provided in the purchase contract. In the event the trust money is received on a day prior to a holiday or other day the depository is closed, the money shall then be deposited on the next business day of the depository. If the trust money is wired by the buyer to either the broker's trust account or a nonbroker third party, the broker shall maintain in the broker's office a complete record of all moneys transferred, including the initial contact request for the wire from the buyer to their financial institution, and confirmation of completion of the transfer. If earnest money is mailed by the buyer to the broker or the nonbroker third party, the envelope containing the postmark must be retained by the broker to establish the date the money was sent.

g. Responsibility. When a broker is registered in the office of the real estate commission as in the employ of another broker, the responsibility for the maintenance of a separate account shall be the responsibility of the employing broker.

h. Noninterest bearing accounts. All trust accounts must be noninterest bearing.

2. Brokers are responsible at all times for deposits and earnest money accepted by them or their salespersons.

a. Personal payments. No payments of personal indebtedness of the broker shall be made from the trust account other than a withdrawal of earned commissions payable to the broker or withdrawals made on behalf of the beneficiaries of the trust account.

b. Withdrawals. Money held in the trust account which is due and payable to the broker should be withdrawn promptly.

c. Earnest money. A broker shall not be entitled to any part of the earnest money or other moneys paid to the broker in connection with any real estate transaction as part or all of the broker's commission or fee until the transaction has been consummated or terminated. The earnest money contract shall include a separate written provision, approved by all parties including the broker, for any division of moneys taken in earnest, when the transaction is not consummated and such moneys are retained as forfeiture payment.

d. Abandoned deposits. Abandoned deposits in a broker's trust account are subject to the laws governing abandoned property as provided in North Dakota Century Code chapter

47-30.1. A deposit that has remained unclaimed for more than three years after it became payable or distributable is presumed abandoned by North Dakota Century Code chapter 47-30.1 and must be reported and delivered to the administrator of the unclaimed property division as provided by North Dakota Century Code chapter 47-30.1. Earnest money deposits are considered payable or distributable as of the closing date on the purchase agreement or date of cancellation of the purchase agreement.

3. A broker shall maintain in the broker's office a complete record of all moneys received or escrowed on real estate transactions, in the following manner:

   a. Bank deposit slips. A bank deposit slip showing the date of deposit, amount, source of the money, and where deposited.

   b. Bank statements. Monthly bank statements are to be retained and kept on file.

   c. Trust account checks. Trust account checks should be numbered and all voided checks retained. The checks should denote the broker's business name, address, and should be designated as "real estate trust account".

   d. Journal. A journal which shows the chronological sequence in which funds are received and disbursed:

      (1) For funds received, the journal must include the date, the name of the party who is giving the money, the property address, and the amount.

      (2) For disbursements, the journal must include the date, the payee, and the amount.

      (3) A running balance must be shown after each entry (receipt or disbursement).

   e. Ledger. This record book will show the receipt and the disbursements as they affect a single, particular transaction as between buyer and seller, etc. The ledger must include the names of both parties to a transaction, the dates, and the amounts received. When disbursing funds, the date, payee, and amount must be shown.

   f. Reconciliation. The trust account must be reconciled monthly except in the case where there had been no activity during that month.

   g. Maintain records. Every broker shall keep permanent records of all funds and property of others received by the broker for not less than six years from the date of receipt of any such funds or property.

History: Amended effective August 1, 1981; January 1, 1992; April 1, 1992; December 1, 1999; July 1, 2010; January 1, 2016; July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-14.1
Law Implemented: NDCC 43-23-11.1(1), 43-23-14.1

70-02-01-16. Complaints - Answer - Dismissal - Hearing.

1. All complaints to be investigated by the real estate commission, as required by North Dakota Century Code section 43-23-11.1, must be in writing on forms furnished by the commission. The complaint shall be verified and shall include: the full name and address of the person making the complaint, hereinafter referred to as the complainant; the full name and address of the person against whom the complaint is made, hereinafter referred to as the respondent; an allegation that respondent is either a licensed broker or salesperson, and if the respondent is a salesperson, then the full name and address of the broker employer; and a clear and concise statement of the facts constituting the alleged complaint including the time and place of occurrence of particular acts and the names of persons involved.

2. The licensee against whom a complaint has been filed must, within twenty days from receipt of complaint, file the licensee's answer on forms furnished by the commission. This answer must be in affidavit form, properly certified, and contain a factual response to the allegations set out in the complaint.

3. If the investigation reveals that the complaint does not involve a violation of the laws or rules, the complaint shall be dismissed without a formal hearing, and the complainant and respondent so informed in writing.

4. If the investigation reveals that the acts of the respondent may be such as to justify disciplinary action against the respondent, a formal hearing will be held on the complaint. Notice of such hearing shall be given at least twenty days in advance by serving upon the respondent a copy of the complaint against the respondent and the date and place of hearing.

History: Amended effective May 1, 1986; January 1, 1992; July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-11.1(3)
Law Implemented: NDCC 43-23-11.1

70-02-01-17. Disputes between licensees.

The commission is not authorized by law nor will it consider or conduct hearings involving disputes over fees or commissions between licensees.

History: Amended effective January 1, 1992; July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-11.1(3)
Law Implemented: NDCC 43-23-11.1(1)

70-02-01-18. Commissions.

The real estate commission neither recommends nor recognizes any agreement to fix or impose uniform rates of commission on any real estate transaction.

General Authority: NDCC 43-23-11.1(3)
Law Implemented: NDCC 43-23-11.1(1)

70-02-01-19. Definitions - Psychologically impacted properties.

As used in this section, the term "psychologically impacted properties" means any real property within this state that is known to be, or is suspected to have been, the site of a suicide, homicide, or other felony, or there are other circumstances, suspicions, or facts which may cause emotional or psychological disturbance or concerns to a prospective purchaser or lessee that have the potential of influencing whether that individual will purchase or lease the property. "Psychologically impacted property" does not mean the fact or suspicion that any present or past occupant is, or has been, infected with or died from human immunodeficiency virus or acquired immune deficiency syndrome or any other disease which has been determined by medical evidence to be highly unlikely to be transmitted through the occupancy of real property.

History: Effective April 1, 1992.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 43-23-11.1(1)

70-02-01-20. Disclosure of psychologically impacted properties - Not a material defect.

The fact that a parcel of real property, or any building or structure thereon, may be psychologically impacted, or may be in close proximity to a psychologically impacted property, is not a material or substantial fact that is required to be disclosed in a sale, lease, exchange, or other transfer of real estate. Licensees are not required to inform a prospective purchaser that certain real property is

psychologically impacted real property. However, if the prospective purchaser asks whether the real property may be psychologically impacted, the licensee is required to inquire of the owner whether there are any facts or suspicions that the property is in fact psychologically impacted, and to advise the prospective purchaser of the owner's response. If the owner refuses to answer the inquiry, the prospective purchaser must be so advised.

History: Effective April 1, 1992.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 43-23-11.1(1)

70-02-01-21. Responsibilities of designated broker.

The designated broker must have a written company policy that identifies and describes the types of real estate agency relationships in which the agency may engage. In addition, any agency that offers representation to both buyers and sellers must also address in the policy manual the agency's procedures intended to prevent any mishandling of information through both formal and informal sharing of information within the agency, the arrangement of agency office space, and the personal relationships of agents who are representing clients with adverse interests. The designated broker is responsible for supervising teams and shall have a written policy that identifies and describes the team relationships in which its licensees may engage. Designated brokers shall maintain a chronological written record of all teams and team membership and provide such records to the commission upon request.

History: Effective July 1, 2010; amended effective July 1, 2022.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 43-23-12.1