

CONTINUING EDUCATION

70-02-04-02. Hours required. To qualify for the renewal of a real estate license, each broker or salesperson must complete sixteen hours of continuing education in approved courses before January 1, 2002, and every two years thereafter. A minimum of six of the required sixteen hours of continuing education must be completed in the first year of each two-year period. the number of hours of continuing education as determined by the commission. The commission may require that up to six hours of the total completed each two-year period a portion or all of the continuing education hours must be in one or more specific areas. Such areas may include the following:

1. Fair housing and antitrust.
2. Environmental issues.
3. License law and ethics.
4. Agency law and principles.
5. Contracts.

History: Effective August 1, 1981; amended effective January 1, 1992; October 1, 1993; December 1, 1999.

General Authority: NDCC ~~43-23-08.2~~ 28-32-02, 43-23-08(6)

Law Implemented: NDCC 43-23-08.2

70-02-04-13. Substantively identical offerings. Courses may not be taken for continuing education more than once during any two-year continuing education period, unless material has been significantly changed, or updated, or both.

History: Effective August 1, 1981; amended effective December 1, 1999.

General Authority: NDCC ~~43-23-08.2~~ 28-32-02, 43-23-08(6)

Law Implemented: NDCC 43-23-08.2

70-02-04-15. Exemptions from continuing education requirement. Any salesperson applicant, upon successful completion of the required postlicensing education requirement, evidence of which has been furnished to the commission by the salesperson applicant's broker, is exempt from the continuing education requirement for only the two-year continuing education period during which the salesperson applicant successfully completed the postlicensing education. Any broker applicant, upon successful completion of the real estate licensing examination is exempt from the continuing education requirement for only the two-year continuing education period during which the broker applicant successfully completed said examination.

History: Effective August 1, 1981; amended effective January 1, 1992; December 1, 1999; January 1, 2006.

General Authority: NDCC ~~43-23-08.2~~ 28-32-02, 43-23-08(6)

Law Implemented: NDCC 43-23-08.2

70-02-04-16. Service as a lecturer, discussion leader, or speaker. For those persons who serve as a lecturer, discussion leader, or speaker regarding a real estate continuing education program, the commission will grant one-hour credit for every hour of service as an instructor or speaker. Requests for credit must be accompanied by an outline of the instruction, discussion, or speech. No credit shall be given for the teaching of a course which is the same or substantially the same as one taught for credit within the same two-year continuing education period. The maximum credit given for service as a lecturer, discussion leader, or speaker will not exceed fifty percent of the continuing education requirement for any two-year continuing education period.

History: Effective August 1, 1981; amended effective December 1, 1999.

General Authority: NDCC ~~43-23-08.2~~ 28-32-02, 43-23-08(6)

Law Implemented: NDCC 43-23-08.2

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 having the broker with whom the salesperson is associated surrender the salesperson's license to the commission, with a written request from the salesperson 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 from the date the license is surrendered. The salesperson placing the salesperson's license on inactive status shall pay the required fee for 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 withdraws from the real estate business entirely and who desires to place the broker's license on an inactive status may do so by surrendering the broker's license to the commission, with a written request that the license be placed on an inactive status. The broker may keep the broker's license on an inactive status for an indefinite period from the date of expiration of the license surrendered. The broker placing the broker's license on inactive status shall pay the required fee for 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.

4. ~~Applicable education requirements for the reactivation of a license shall consist of eight hours for each year of inactive status, but not to exceed sixteen hours~~ **To reactivate an inactive license, a licensee must meet the continuing education hours as required by North Dakota Century Code section 43-23-08.2 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 North Dakota Century Code section 43-23-08.2 must have been fulfilled within the ~~two~~ **three** years immediately preceding the return to active status.

History: Amended May 1, 1986; January 1, 1992; February 1, 2004.

General Authority: NDCC 28-32-02, 43-23-08(7-6)

Law Implemented: NDCC 43-23-08.2

Proposed amendments to 70-02-04-02, 70-02-04-13, 70-02-04-15, and 70-02-04-16 reflect the change in NDCC § 43-23-08.2 during the 2009 legislative session authorizing the ND Real Estate Commission to establish the continuing education requirements. Proposed amendment to 70-02-01-05 clarifies the number of hours a licensee will need to activate their inactive license.

EARNEST MONEY

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 an authorized 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. **Definitions.** The term "authorized financial institution" means 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.
- b. **Name of account.** The name of such separate account shall be identified by the words "trust account" or "escrow account".
- c. **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 trust account card shall be filed with the commission by each new applicant for a real estate broker's license. A new form shall be filed with the commission each time a broker changes the real estate trust account in any manner whatsoever including, but not limited to, 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.
- d. **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.
- e. **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.
- f. **Number of accounts.** A broker may maintain more than one trust account provided the commission is advised of the account.
- g. **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.

- h. **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.
 - i. **Interest-bearing accounts.** All trust accounts must be interest-bearing and the interest earned must be disbursed only as provided by law, unless all persons having an interest in the funds have otherwise agreed in writing and a copy of the agreement is maintained by the broker for inspection by the commission.
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 separate account other than a withdrawal of earned commissions payable to the broker or withdrawals made on behalf of the beneficiaries of the separate account.
 - b. **Withdrawals.** Money held in the separate 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.
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 permanently bound record book called 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 name of the principal, and the amount.
 - (2) For disbursements, the journal must include the date, the payee, and the amount.
 - (3) For interest earned and withdrawn, the journal must include the amount, the date earned or withdrawn, and the payee.
 - (4) 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.

General Authority: NDCC 43-23-14.1, 43-23.4-06(2)

Law Implemented: NDCC 43-23-11.1(1)

Proposed amendment clarifies that provisions concerning earnest money be in writing.

OFFICE POLICY

70-02-03-17. Designated broker - Appointed agent.

~~1. **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 appointed agents who are representing clients with adverse interests.~~

21. Appointed agent procedures and disclosure.

a. A designated broker appointing a licensee to act as an agent of a client shall take ordinary and necessary care to protect confidential information disclosed by the client to the appointed agent.

b. An appointed agent may reveal to the agency's designated broker confidential information of a client for seeking advice or assistance for the benefit of the client about a possible transaction. The designated broker shall treat confidential information as such and may not disclose such information unless otherwise requested or permitted by the client who originally disclosed the confidential information.

32. Appointed agent - Written disclosure.

a. An appointed agent shall disclose in writing such appointment to the client before entering into a brokerage agreement and shall include, at a minimum, the following provisions:

(1) The name of the appointed agent;

(2) A statement that the appointed agent will be the client's agent and will owe the client fiduciary duties, which among other things, include the obligation not to reveal confidential information obtained from the client to other licensees, except to the designated broker for seeking advice or assistance for the benefit of the client;

(3) A statement that the agency may be representing both the seller and the buyer in connection with the sale or purchase of real estate;

(4) A statement that other licensees may be appointed during the term of the brokerage agreement should the appointed agent not be able to fulfill the terms of the brokerage agreement or as by agreement between the designated broker and client. An appointment of another agent as a new or additional agent does not relieve the first appointed agent of any of the fiduciary duties owed to the client. At the time of the appointment of the new or additional agents, the designated broker must comply with the provisions of this section; and

(5) A section for the client to consent or not consent, in writing, to the appointment.

43. Appointed agent's duty to the designated broker. In any appointed agent transaction, the appointed agent shall keep the designated broker fully informed of all activities conducted by the appointed agent during the transaction and shall notify the designated broker of any other activities that might affect the responsibility of the designated broker.

History: Effective April 1, 1996.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 43-23-12.3

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.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 43-23-12.1

Proposed rule change moves the "Responsibilities of designated broker" to a more appropriate section of the Administrative Rules.

Proposed amendments to the Administrative Rules were approved by the ND Real Estate Commission on November 18, 2009.