

## **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 in ethical practices by all real estate licensees doing business in North Dakota, and to seek out and prosecute those persons who unlawfully engage in dishonest, fraudulent, or criminal activities in connection therewith.

**History:** Amended effective January 1, 1992.

**General Authority:** NDCC 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 sent with the application.
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 and are to be filled in personally by, or under the supervision of, the applicant.
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 license suspended or revoked in another state.
  - e. The check used in paying an examination or license fee shall not, for any reason, be honored by the financial institution upon which it is written.
  - f. 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.
  - g. 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 as a salesperson or broker associate pursuant to North Dakota Century Code section 43-23-05.1 must be accompanied by a one-time license fee of not more than two 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 one-time 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.

**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 written examination until and unless the applicant has been authorized in writing to appear for the examination.
2. If an applicant should fail to appear for examination within four months after notification by the commission that the applicant is qualified to take the examination, an applicant must reapply for examination as in the first instance and pay the required fee.
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 in complete detail together with the statutory 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.

**History:** Amended effective January 1, 1992; February 1, 2004; April 1, 2008.

**General Authority:** NDCC 28-32-02, 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 comply with all the requirements of a new applicant to regain a license.

**History:** Amended effective October 1, 2015.

**General Authority:** NDCC 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 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. 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.

**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 domicile 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 residence. 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.

**History:** Amended effective May 1, 1986; January 1, 1992; April 1, 2008; October 1, 2015.

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

**Law Implemented:** NDCC 43-23-10

**70-02-01-07. Licensee's duties upon surrender, suspension, or revocation of license.**

A broker or salesperson, upon surrendering the broker's or salesperson's license or upon notice of suspension or revocation of the broker's or salesperson's license, shall forward the same at once to the commission. If the license is that of a broker, the broker shall also forward to the commission with the broker's license all salesperson's licenses in the broker's possession or in the broker's office and shall be responsible for all missing licenses of the broker's salesperson. No refund will be made upon any license when surrendered, suspended, or revoked.

**History:** Amended effective January 1, 1992; February 1, 2004.

**General Authority:** NDCC 43-23-11.1(3)

**Law Implemented:** NDCC 43-23-11.1

**70-02-01-08. Salesperson transfer or release.**

The real estate broker shall retain in the broker's possession the license of all real estate salespersons licensed under the broker and shall relinquish possession of the licenses only to the real estate commission. When for any reason a salesperson severs connection with the salesperson's broker and desires to transfer to another broker, the salesperson must secure a transfer and release form provided by the commission, to be executed by the salesperson, the salesperson's former broker, and the salesperson's new employing broker. Should the salesperson's former broker not be agreeable to the transfer or release, the 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.

**General Authority:** NDCC 28-32-02, 43-23-08(7), 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 regularly licensed who does not conduct an office under the broker's own name, but is employed by another licensed broker or affiliated with another licensed broker on a fee division basis 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 employing or supervising broker. The employing or supervising broker shall at all times be responsible for the action of the employed or affiliated broker to the same extent as though the employed or affiliated broker were an employed salesperson.

**History:** Amended effective January 1, 1992.

**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 employing broker receives the appropriate license. Any salesperson leaving the employment of a broker shall not take nor use any agreements (listing/buyer broker agreements, management contracts, etc.) secured through the office or through salespersons of the former employing broker unless specifically authorized by the 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.

**General Authority:** NDCC 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 ten 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, 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.

**General Authority:** NDCC 43-23-11.1(3)

**Law Implemented:** NDCC 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 employer 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.

**General Authority:** NDCC 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 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.
  - 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
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; July 1, 2010; January 1, 2016.

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

**Law Implemented:** NDCC 43-23-11.1(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 and filed in triplicate 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, or complaints, has been filed must, within twenty days from receipt of copy or copies of complaints, file the licensee's answer in triplicate on forms furnished by the commission. This answer must be in written affidavit form in triplicate, 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, rules, or code of ethics regulating licensees, the complaint shall be dismissed without a formal hearing, and the complainant 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.

**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 real estate commission is not authorized by law nor will it consider or conduct hearings involving disputes over fees or commissions between cooperating brokers or brokers and salespersons.

**History:** Amended effective January 1, 1992.

**General Authority:** NDCC 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.

**History:** Effective July 1, 2010.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 43-23-12.1