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Sixty-eighth
Legislative Assembly
of North Dakota

FIRST ENGROSSMENT
with Senate Amendments
ENGROSSED HOUSE BILL NO. 1107

Introduced by

Industry, Business and Labor Committee

(At the request of the North Dakota Real Estate Appraiser Qualifications and Ethics Board)

A BILL for an Act to amend and reenact sections 43-23.3-01 and 43-23.3-02, subsection 1 of section 43-23.3-03, sections 43-23.3-04 and 43-23.3-05, subsection 1 of section 43-23.3-06, and sections 43-23.3-07, 43-23.3-08, 43-23.3-09, 43-23.3-10, 43-23.3-11, 43-23.3-13, 43-23.3-17, 43-23.3-18, and 43-23.3-23 of the North Dakota Century Code, relating to the regulation of real estate appraisers; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-23.3-01 of the North Dakota Century Code is amended and reenacted as follows:

43-23.3-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Analysis" means a study of real estate other than estimating value.
2. "Appraisal" means an analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, real estate. An appraisal may be classified by subject matter into either a valuation or an analysis.
3. "Appraisal assignment" means an engagement for which a person is employed or retained to act, or would be perceived by the public as acting, as a disinterested party in rendering an unbiased supportable appraisal.
4. "Appraisal foundation" means the appraisal foundation incorporated as an Illinois corporation on November 30, 1987.
5. "Appraisal report" means any communication of an appraisal.
6. "Appraisal subcommittee" means the appraisal subcommittee of the federal financial institutions examination council.
7. "Appraiser" means a person who engages in appraisal activity for valuable consideration.

8. "Apprentice appraiser" means a person who holds a valid permit as an apprentice appraiser.
9. "Board" means the North Dakota real estate appraiser qualifications and ethics board.
10. "Certified appraiser" means a person who holds a valid permit as a certified residential or general appraiser.
11. "Certified general appraiser" means a person who holds a valid permit as a certified general appraiser.
12. "Certified residential appraiser" means a person who holds a valid permit as a certified residential appraiser.
13. "Licensed appraiser" means a person who holds a valid permit as a licensed appraiser.
14. "Permit" means the document issued by the board, verifying that the person named on the permit has fulfilled all prerequisites to practice either as an apprentice appraiser, a licensed appraiser, or a certified appraiser.
15. "Real estate" means an identified parcel or tract of land including improvements, and interests, benefits, and rights inherent in the ownership of real estate.
16. "Uniform standards of professional appraisal practices" means standards of appraisal promulgated by the appraisal standards board of the appraisal foundation as adopted ~~and modified~~ by the board. ~~The standards adopted and modified by the board must meet the minimum standards adopted by the appraisal foundation.~~
17. "Valuation" means an estimate of the value of real estate or real property.

SECTION 2. AMENDMENT. Section 43-23.3-02 of the North Dakota Century Code is amended and reenacted as follows:

43-23.3-02. North Dakota real estate appraiser qualifications and ethics board.

1. The governor shall appoint the board. The board must consist of five members. One member must represent the public; one member must be a representative of the financial industry; and three members must be appraisers, at least one of which is experienced in the appraisal of agricultural property.
   a. Each appraiser member of the board must be either a licensed or certified appraiser, but at least two of the appraiser members must be certified appraisers.

b. The governor shall appoint the financial industry representative from a list of qualified individuals submitted by the North Dakota bankers associations, the credit union association of the Dakotas, and the North Dakota farm credit system associations. Each of these entities may submit two names of candidates to the governor. The public member of the board may not be engaged in the practice of real estate appraising.

2. The term of each member is five years. A member may not serve more than two consecutive five-year terms, after which at least two years must pass before the governor may reappoint that former member to the board. The governor shall appoint members so the terms of no more than two members expire each year. A member of the board continues to hold office until the appointment and qualification of a successor. The governor may remove a board member for cause.

3. Annually the members shall elect a chairman from among the members. ~~At least two of the members who are appraiser members must be present in order for a quorum to exist. The members are entitled to receive compensation for each day actually engaged in the service of the board and actual and necessary traveling expenses at the rate allowed other state officials, paid from the fees collected by the board.~~

4. At least two of the members who are appraiser members must be present in order for a quorum to exist.

5. The members are entitled to receive compensation for each day actually engaged in the service of the board and actual and necessary traveling expenses at the rate allowed other state officials, paid from the fees collected by the board.

SECTION 3. AMENDMENT. Subsection 1 of section 43-23.3-03 of the North Dakota Century Code is amended and reenacted as follows:

1. The board, or the board's designated representative, shall:

a. Define apprentice appraiser, licensed appraiser, certified residential appraiser, and certified general appraiser; determine the type of educational experience, appraisal experience, and equivalent experience that meet the requirements of this chapter; establish application procedures; and establish standards for approval and disapproval of applications for permits.

b. Establish examination specifications for ~~each category of licensed and certified~~the apprentice and supervisory appraiser and administer examinations.

c. Approve or disapprove applications for permits, issue ~~pocket cards and~~ permits to practice, and maintain a registry of the names and addresses of individuals holding permits.

d. Discipline permittees.

e. Hold meetings, hearings, and examinations in places and at times as the board designates and maintain records of board activities.

f. Adopt rules, pursuant to chapter 28-32, necessary to implement this chapter or carry out the requirements imposed by federal law.

g. Adopt rules that clearly and concisely establish the standards for approval and disapproval of applications for permits. The rules must include a requirement that an application disapproval clearly specify the basis for the disapproval.

h. Keep permittees informed of board activities, including providing notification of board member terms and any upcoming board vacancy; internet posting of meeting notices and minutes; and internet posting of proposed and final rule changes.

SECTION 4. AMENDMENT. Section 43-23.3-04 of the North Dakota Century Code is amended and reenacted as follows:

43-23.3-04. Permit required - Exemptions.

1. Except as provided in this section, a person may not directly or indirectly engage in, advertise, conduct the business of, or act in any capacity as an apprentice, licensed, or certified appraiser without first obtaining a permit as provided in this chapter.

2. An appraiser, apprenticed, licensed, or certified in another state may not engage in, advertise, conduct the business of, or act in any capacity as an appraiser in this state without first obtaining a temporary permit under section 43-23.3-11 or a permit under section 43-23.3-04.1.

3. This chapter does not apply to a licensed real estate broker or salesperson who, in the ordinary course of business, gives an opinion to a potential seller or third party as to the recommended listing price of real estate or an opinion to a potential purchaser or

third party as to the recommended purchase price of real estate. However, the opinion as to the listing price or the purchase price may not be referred to as an appraisal.

4. This chapter does not apply to a person who, in the ordinary course of business, gives an opinion of the value of real estate to that person's employer.

5. This chapter does not apply to a person employed by the Bank of North Dakota when providing evaluations or reviews of appraisals for federally insured depository institutions under federal financial institution regulatory agency appraisal exemptions.

SECTION 5. AMENDMENT. Section 43-23.3-05 of the North Dakota Century Code is amended and reenacted as follows:

43-23.3-05. Permit process.

An individual who desires to engage in the practice of real estate appraisal shall apply for a permit ~~on forms prescribed by~~with the board and submit the required fee.

SECTION 6. AMENDMENT. Subsection 1 of section 43-23.3-06 of the North Dakota Century Code is amended and reenacted as follows:

1. An apprentice appraiser must meet the minimum requirements established by the board for a permit. An apprentice appraiser may only assist ~~a licensed or~~ a certified appraiser in the performance of an appraisal assignment.

SECTION 7. AMENDMENT. Section 43-23.3-07 of the North Dakota Century Code is amended and reenacted as follows:

43-23.3-07. Examination requirement.

The board shall issue a permit to practice as a licensed, certified residential, or certified general appraiser to an individual who has ~~demonstrated the following qualifications through a written examination process:~~

~~1. Knowledge of technical terms used in or related to real estate appraising, appraisal report writing, and economic concepts relating to real estate.~~

~~2. Understanding of the principles of land economics, appraisal processes, and of problems likely to be encountered in gathering, interpreting, and processing of data in carrying out appraisal disciplines.~~

~~3. Understanding of the uniform standards of professional appraisal practices.~~

~~4. Knowledge of theories of depreciation, cost estimating, methods of capitalization, the mathematics of real estate appraisal, and other principles and procedures determined by the board to be appropriate for the appreciable classification of permit.~~

~~5. Basic understanding of real estate law.~~

~~6. Understanding of the types of misconduct for which disciplinary proceedings may be initiated against an appraiser~~successfully completed the appropriate national examination as required by the appraisal foundation appraisal qualification board criteria.

SECTION 8. AMENDMENT. Section 43-23.3-08 of the North Dakota Century Code is amended and reenacted as follows:

43-23.3-08. ~~Application prerequisites~~Appraisal education requirements.

An applicant for a permit as an apprentice, licensed, certified residential, or certified general appraiser ~~must~~shall successfully complete the education requirements established by the board.

SECTION 9. AMENDMENT. Section 43-23.3-09 of the North Dakota Century Code is amended and reenacted as follows:

43-23.3-09. Appraisal experience requirements.

The board may issue a permit to practice as a licensed, certified residential, or certified general appraiser to an individual who possesses the minimum experience requirements established by the board. ~~The board shall require an applicant to furnish, under oath, a detailed listing of the appraisal reports or file memoranda for which appraisal experience is claimed by the applicant. Upon request, the applicant shall provide to the board copies of appraisal reports or other documents that the applicant has assisted in preparing.~~

SECTION 10. AMENDMENT. Section 43-23.3-10 of the North Dakota Century Code is amended and reenacted as follows:

43-23.3-10. Expiration of permit.

Permits expire biennially on December thirty-first ~~of each year~~. The expiration date of the permit must appear on the permit and no other notice of its expiration need be given to the permittee.

SECTION 11. AMENDMENT. Section 43-23.3-11 of the North Dakota Century Code is amended and reenacted as follows:

43-23.3-11. Temporary permit.

1. The board may issue a temporary permit to an applicant who is ~~apprenticed,~~ licensed, or certified in good standing by another state. The board may deny a temporary permit to an applicant whose permit, apprenticeship, license, or certification was revoked, suspended, or otherwise subjected to discipline by any state or jurisdiction.
2. ~~An applicant for a temporary permit shall file with the board a designation in writing which appoints the chairman of the board to act as the applicant's licensed agent upon whom all judicial and other process or legal notices directed to the applicant may be served. Copies of the appointment, certified by the chairman of the board, may be received in evidence in any proceeding and must be given the same effect as the original. In the written designation, the applicant shall agree that any lawful process against that individual which is served upon the agent is of the same legal force as if served upon the applicant, and that the authority of the agent continues in force as long as any liability of the applicant remains outstanding in this state. Upon the receipt of any process or notice, the chairman shall mail a copy of the process or notice by certified mail, return receipt requested, to the last-known business address of the applicant.~~

~~3.~~ The board may issue a temporary permit to an applicant if the applicant agrees in writing to abide by this chapter and to submit to the jurisdiction of the board.

~~4.~~3. The board shall issue a temporary permit to an applicant who has complied with this section. The board may require the applicant to pay a fee. The board shall determine the amount of the fee and the duration of the temporary permit.

SECTION 12. AMENDMENT. Section 43-23.3-13 of the North Dakota Century Code is amended and reenacted as follows:

43-23.3-13. Principal place of business.

A permittee shall notify the board of the address of the permittee's place of business. Within twenty days of a change in the address of the place of business, the permittee shall give written notification of the change to the board ~~and pay the change of address fee~~.

SECTION 13. AMENDMENT. Section 43-23.3-17 of the North Dakota Century Code is amended and reenacted as follows:

43-23.3-17. Retention of records.

An apprentice, licensed, or certified appraiser shall ~~retain, for at least five years, originals or copies of all written contracts engaging the permittee's services for appraisal work and all reports and supporting data assembled and formulated by the permittee in preparing the reports. The period for retention of records applies to each engagement of the services of the permittee and commences upon the date of the submission of the appraisal to the client unless, within that period, the permittee is notified that the appraisal report is involved in litigation, in which event the period for the retention of records commences on the date of the final disposition of the litigation. The permittee shall make available for inspection and copying by the board on reasonable notice all records required to be maintained~~comply with the recordkeeping rule as specified in the uniform standards of professional appraisal practice.

SECTION 14. AMENDMENT. Section 43-23.3-18 of the North Dakota Century Code is amended and reenacted as follows:

43-23.3-18. Standards of professional appraisal practice.

An apprentice, licensed, or certified appraiser shall comply with the standards of professional appraisal practice and ethical rules specified by the uniform standards of professional appraisal practice and all other standards and ethical requirements adopted by the appraisal standards board of the appraisal foundation.

SECTION 15. AMENDMENT. Section 43-23.3-23 of the North Dakota Century Code is amended and reenacted as follows:

43-23.3-23. Penalties.

A person acting or purporting to act as an apprentice, licensed, or certified appraiser without holding a permit to practice is guilty of a class A misdemeanor. An appraiser, apprenticed, licensed, or certified in another state, who engages in, advertises, conducts the business of, or acts in any capacity as an appraiser without first obtaining a ~~temporary~~ permit is guilty of a class A misdemeanor. In addition to any other penalty, a person receiving any money or other compensation in violation of this chapter is subject to a penalty of not less than the amount of the sum of money received and not more than three times the sum in the discretion of the court.