

FIRST ENGROSSMENT

ENGROSSED HOUSE BILL NO. 1125

Introduced by

Representative Louser

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

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 43-23-06.1 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **43-23-06.1. Definitions.**

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

- 8 1. "Appointed agent" means a licensee appointed by a designated broker of the
9 licensee's real estate brokerage firm to act solely for a client of that brokerage firm to
10 the exclusion of other licensees of that brokerage firm.
- 11 2. "Client" means a person that has entered a written agency agreement with a real
12 estate brokerage firm.
- 13 3. "Commission" means the North Dakota real estate commission.
- 14 4. "Customer" means a buyer, prospective buyer, seller, lessee, or lessor that is not
15 represented by that real estate brokerage firm in a real property transaction.
- 16 5. "Designated broker" means a licensee designated by a real estate brokerage firm to
17 act on behalf of the brokerage firm.
- 18 6. "Dual agency" means a situation in which a real estate brokerage firm or the real
19 estate brokerage firm's licensees owe a duty to more than one party in a real estate
20 transaction. Dual agency is established only as follows:
 - 21 a. When one licensee represents both the buyer and the seller in a real estate
22 transaction; or

b. When two or more licensees, licensed to the same broker, each represents a party to the real estate transaction.

"Dual agency" does not exist unless both the seller and the buyer in a real estate transaction have written agency agreements with the same real estate brokerage firm. For purposes of "dual agency" a subagency arrangement is not a written agency agreement.

7. "Licensee" means a real estate broker, an associate real estate broker, or a real estate salesperson who is associated with a real estate brokerage firm.

8. "Real estate", "real property", "realty", or words of like import, means any interest or estate in land, including leaseholds, whether such interest or estate is corporeal, incorporeal, freehold, or nonfreehold, and whether situated in this state or elsewhere; provided, however, that the meaning as used in this chapter does not include oil, gas, or mineral leases, nor does it include any other mineral leasehold, mineral estate, or mineral interest of any nature whatsoever.

9. "Real estate broker", or "broker", means any person that, for another, for a fee, commission, salary, or other consideration, or with the intention or expectation of receiving or collecting such compensation from another, engages in or offers or attempts to engage in, either directly or indirectly by a continuing course of conduct or by a single act or transaction, any of the following acts:

a. Lists, offers, attempts, or agrees to list real estate or any interest in that real estate, or any improvements affixed on that real estate for sale, exchange, or lease.

b. Sells, exchanges, purchases, or leases real estate or any interest in that real estate, or any improvements affixed on that real estate.

c. Offers to sell, exchange, purchase, or lease real estate or any interest in that real estate, or any improvements affixed on that real estate.

d. Negotiates or offers, attempts, or agrees to negotiate the sale, exchange, purchase, or leasing of real estate or any interest in that real estate, or any improvements affixed on that real estate.

e. Buys, sells, offers to buy or sell, or otherwise deals in options on real estate or any interest in that real estate, or any improvements on that real estate.

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

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

25 **43-23-08. License standards.**

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

1 application. To determine the competency of applicants, the commission shall
2 prescribe and hold examinations at designated times and places.

3 2. In addition to the requirements established by subsection 1, an applicant for a broker's
4 or salesperson's license must be at least eighteen years of age.

5 3. Every applicant for a license as a real estate broker:

6 a. Must have been actively engaged as a licensed real estate salesperson for a
7 period of at least two years preceding the date of application; or

8 b. Must have had experience as determined by the commission to be substantially
9 equal to that which a licensed real estate salesperson would ordinarily receive
10 during a period of two years.

11 4. As a prerequisite for licensure, an applicant for a salesperson's license shall furnish to
12 the commission evidence the applicant has successfully completed at least ninety
13 hours in courses of study approved by the commission. An applicant for a broker's
14 license must have successfully completed an additional sixty hours in courses of study
15 approved by the commission. An applicant for a salesperson's or broker's license may
16 take the licensing examination before fulfillment of the prerequisite educational
17 requirement; however, the commission may not issue a ~~salesperson's~~ license to an
18 applicant unless satisfactory evidence of completion of this prerequisite educational
19 requirement is furnished to the commission. ~~An applicant for a broker's license must~~
20 ~~have satisfactorily fulfilled the educational requirement before taking the broker's~~
21 ~~licensing examination.~~

22 5. If the commission finds an applicant could not acquire employment as a licensed real
23 estate salesperson because of conditions existing in the area where the salesperson
24 resides, the experience requirements established in subdivisions a and b of
25 subsection 3 may be waived by the commission. The educational requirements of
26 subsection 4 may not be waived by the commission, but guidelines may be
27 established by which applicants who have engaged in certain educational courses of
28 study which are closely related to the real estate profession may be deemed to have
29 satisfied this requirement.

30 6. The commission may adopt reasonable rules and regulations pursuant to the
31 provisions of chapter 28-32 relative to procedures for licensing, approval of

1 coursework, and for the type of certification or proof of coursework completion that
2 must be submitted.

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

5 **43-23-13.1. License renewal.**

6 1. Every person licensed to practice as a real estate broker or real estate salesperson
7 shall register ~~annually~~ with the commission at a regular interval set by the commission
8 not less than annually and pay the appropriate ~~annual~~ renewal fee as provided in
9 section 43-23-13. The application for renewal must be accompanied by such
10 certification as required by this chapter and rules of the commission to show
11 compliance with the educational requirements of sections 43-23-08 and 43-23-08.2,
12 and must be submitted to the commission with the appropriate fee no later than the
13 application deadline set by the commission. A licensee that fails to file a timely
14 application for the renewal of any license and pay the renewal fee on or before the
15 application deadline set by the commission may file a late renewal application,
16 together with the required educational certification, ~~before January fifteenth of the~~
17 ~~subsequent year~~ on or before a date set by the commission and shall pay, in addition
18 to the renewal fee, a late fee as set by the commission for each month or fraction of a
19 month after the application deadline. Any license not renewed by ~~January fifteenth~~ the
20 late renewal date set by the commission must be canceled. The cancellation must be
21 performed without any notice or opportunity for hearing. Any person whose license has
22 been canceled and which desires relicensure must be required to satisfy the
23 application and examination requirements for prospective licensees in accordance
24 with this chapter and rules of the commission.

25 2. A licensee may not engage in any activity after ~~December thirty-first~~ the license
26 renewal date set by the commission of any year for which a license is required under
27 this chapter unless that person's license has been renewed by the commission.

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

30 **43-23-24. Wholesale buyers and sellers - Disclosure.**

31 1. As used in this section:

1 a. ~~"Residential real property" means real property with fewer than five dwelling-~~
2 ~~units.~~

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

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

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

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