

The following proposed new rules, amendments to rules, and repeal of rules in N.D. Admin. Code Title 70 (Real Estate Commission), Articles 70-01 (General Administration) and 70-02 (Real Estate Licensure), are being considered by the North Dakota Real Estate Commission:

70-01-01-01. Organization of real estate commission.

1. **History and functions.** The 1957 legislative assembly passed a real estate licensing law, codified as North Dakota Century Code chapter 43-23. This chapter requires the governor to appoint a state real estate commission. It is the responsibility of the commission to administer the real estate license law regarding brokers and salespersons and to regulate the sale of out-of-state subdivided lands offered for sale to residents of North Dakota. In addition, the commission is required to administer a real estate education, research, and recovery fund whereby aggrieved persons may make application for the payment of unsatisfied judgments.
- ~~2. **Commission membership.** The commission consists of five members, three of whom are active real estate brokers, appointed by the governor. Members of the commission are appointed for a term of five years, staggered so the term of one member expires each year. At the expiration of the term of any member of the commission, the governor appoints a successor for a term of five years.~~
- ~~3.~~2. **Executive director.** The executive director of the commission is employed by the commission and is responsible for administration of the commission's activities.
- ~~4.~~3. **Inquiries.** Inquiries regarding the commission may be addressed to the executive director.

History: Amended effective July 1, 2006; April 1, 2008; July 1, 2022.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 43-23-03

70-01-02-02. Public hearing.

All hearings conducted by the commission, ~~or its duly authorized employees,~~ shall be open to the public, unless otherwise ordered by the presiding officer at the hearing, or specifically provided by statute.

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

Law Implemented: NDCC 44-04-19

70-01-02-05. Conduct of hearing.

The hearing shall be conducted and presided over by a member of the commission or such ~~subordinate~~ individual as may be designated ~~to hear the matter~~ by the chairman of the commission.

History: Amended effective July 1, 2022.

General Authority: NDCC 28-32-02, 43-23-11.1(3)

Law Implemented: NDCC 43-23-11.1(3)

70-01-02-09. Service of process.

Complaints, notices, orders or other processes of the commission shall be served personally, or by registered or certified mail, or by email to the licensee's email address on file with the commission, or by another method consented to in writing ~~as the real estate commission may direct~~. Time for answering, or time required on other motions, shall be as prescribed by the commission by rule, or in the absence of such rule, as prescribed by the district courts of North Dakota.

History: Amended effective May 1, 1986.

General Authority: NDCC 28-32-02, 43-23-11.1(3)

Law Implemented: NDCC 43-23-11.1(2)(3)

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.~~1. All applications must be filed with the commission ~~before an examination~~, complete in every detail with every question answered and correct fees submitted.

~~3.~~2. 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~~ may be required to submit to the commission an ~~letter from applicant assessment form completed and signed by~~ 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.~~ The form shall be provided by the commission.

"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.~~3. Each application for license shall be made on application forms provided by the real estate commission.

~~5.~~4. After an application is filed, no refund of application fee will be made to any applicant.

~~6.~~5. 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, ~~or other laws and regulations of the State of North Dakota, any other state, the United States of America or any of its territories, or any other country.~~
- 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 payer 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.~~

e. The inquiry and investigation made by the commission as to the financial responsibility of the applicant revealed that, for the protection of the public, the application should be denied.

~~7.6.~~ 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.

~~8.7.~~ The commission may require such other proof as may be deemed advisable of the honesty, truthfulness, and ~~good reputation~~ fair dealing 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.

~~9.8.~~ Inquiry and investigation may be made by the commission as to the financial responsibility of each applicant, including but not limited to credit and bankruptcy history.

~~10.9.~~ 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.

~~11.10.~~ When a partnership submits its application for a license, the application must be accompanied by a copy of the partnership agreement.

~~12.11.~~ 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.

~~43-12~~. 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.~~

1. Unless otherwise provided in these rules, all applicants shall be required to pass both the North Dakota and national examinations.

~~4.2. If the salesperson or broker applicant passes one portion of the examination, national or state, the salesperson applicant shall may not be required to repeat that portion of the examination if that applicant later passes the remaining portion, unless otherwise directed by the commission 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)

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

~~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 period** 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. **A broker 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 broker shall first request that the broker's license be reactivated by the commission.** 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.~~ Licensees from reciprocal and non-reciprocal states.

~~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.~~

~~4.1.~~ 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.

~~5.2.~~ An applicant currently licensed in a nonreciprocal state who has successfully passed the real estate licensing examination given in another state ~~need~~ **may be required to only** take the ~~state~~ **North Dakota** 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

70-02-01-08. 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.~~

When for any reason a licensee severs connection with the licensee's designated broker, the licensee must immediately either be transferred to another designated broker or the license status must be changed to inactive. The licensee and the current designated broker must immediately complete and submit an applicable form provided by the commission. The commission shall have discretion to process a transfer or change in status if either the licensee or the designated broker fails to complete form. 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, shall be considered a broker associate and shall ~~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 ~~associate~~ broker's ~~designated 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 associate 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)

70-02-01-11. 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, **and pay the fee set by the commission.**
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)

70-02-01-13. ~~Prevention of same or deceptively similar r~~Real estate firm names.

A real estate firm may operate under only one trade name. 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)

70-02-01-15. 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. **A broker shall maintain a separate trust account for each firm.**

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 **notarized 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 commission has delegated its investigation power to an investigator, and that investigator determines the alleged facts in a complaint, if true, are not grounds for disciplinary action, the investigator may summarily dismiss the complaint without an order from the commission. Summary dismissals must be without prejudice. At any time, upon finding there may be grounds for disciplinary action, the commission may either issue an order reviving a summarily dismissed complaint, or may initiate a new complaint.
- ~~4.~~5. 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

70-02-01-22. Duplicate licenses.

The holder of a broker or salesperson license may be affiliated with one firm and one branch in North Dakota. So long as the license remains active, the broker or salesperson may also hold duplicate licenses for affiliation with additional firms and branches. A salesperson may only hold duplicate licenses for firms or branches associated with the same broker. Duplicate licenses must be renewed concurrently with the broker or salesperson license. A fee as set by the commission shall accompany an application for a duplicate license and all renewals.

General Authority: NDCC 28-32-02, 43-23-12, 43-23-12.1, 43-23-13

Law Implemented: NDCC 43-23-08

70-02-01-23. Requirement to attempt resolution of disputes prior to commission involvement.

A licensee who believes that another licensee has violated the commission's rules or statutes must make a good-faith effort to resolve the matter directly with the other licensee or the other licensee's supervising designated broker before submitting a complaint or report to the commission. The attempt at resolution shall be made in writing, which may include email, text, or other verifiable written correspondence, and shall identify the nature of the alleged violation and request corrective action. Any complaint or report submitted to the commission by a licensee alleging violations of the commission's rules or statutes must include a summary and documentation of the licensee's attempt to resolve the matter with the other licensee or supervising designated broker, including copies of written correspondence.

General Authority: NDCC 28-32-02, 43-23-11.1(3)

Law Implemented: NDCC 43-23-11.1

70-02-02-02. Application for prelicensure course approval.

In order for any prelicensure course to be approved by the real estate commission a complete application shall be filed with the commission ~~not less than forty-five days prior to the contemplated date of offering the first course~~. The application, in addition to the name and address of the ~~school~~ **course sponsor** offering the course as well as any other **identifying** criteria which the commission may require, must be accompanied by a nonrefundable fee **as set by the commission**. ~~not to exceed two hundred dollars, and must include:~~

- ~~1. A proposed course outline, in reasonable detail, with hours spent on each subject area to be covered by the course. Each outline shall make reference to the textbook used and other material related to the course or subject matter, and shall substantially conform to the approved curricula outlines prepared by the commission.~~
- ~~2. An instructor application or resume on all instructors and subject to be taught.~~
- ~~3. The date, time, and place of any synchronous course hours.~~
- ~~4. Tuition and other costs or fees for students.~~

History: Amended effective January 1, 1992; January 1, 2006; July 1, 2022.

General Authority: NDCC 28-32-02, 43-23-08, 43-23-13

Law Implemented: NDCC 43-23-08, 43-23-13

70-02-02-03. Qualifications for classroom instructors.

Any person applying for commission approval of classroom instruction must furnish to the commission evidence satisfactory to the commission that every instructor giving classroom instruction has the necessary specialized preparation, training, and experience to ensure competent instruction.

~~Instructors who, in the estimation of the school administration, are deemed inadequate or do not satisfy the school's standards of quality should have their services terminated by the school.~~

General Authority: NDCC 43-23-08

Law Implemented: NDCC 43-23-08

70-02-02-05. Commission review of all real estate courses.

~~Every three years,~~ At a regular interval as set by the commission, which shall be not less than annual, the school shall submit another complete application. The commission shall review the school to determine if it meets the requirements of law and commission for certification ~~for another three years.~~

History: Amended effective July 1, 2022.

General Authority: NDCC 28-32-02, 43-23-08

Law Implemented: NDCC 43-23-08

70-02-02-08. Withdrawal of approval.

If the commission determines a school is not meeting the requirements of law for continued approval, the commission shall immediately notify the school in writing detailing the deficiencies requiring correction. The schools' approval by the commission shall continue ~~ninety days~~ for the number of days set by the commission from the date of the commission's written notice to the school, and if, at the expiration of that period, the school has failed to correct to the commission's satisfaction the deficiencies noted, the commission may withdraw approval of the school.

History: Amended effective July 1, 2022.

General Authority: NDCC 28-32-02, 43-23-08

Law Implemented: NDCC 43-23-08

70-02-02-13. Certification of completion.

Each school shall issue to the students successfully completing a course of instruction an official certificate **or letter** of completion which reflects the school's name, course title, and number of classroom hours (or other recognized educational unit) involved in the course, **and the student's date of successful completion of the course**. Such certificate **or letter**, or copies thereof, shall serve as evidence when presented to the commission of successful completion of the course of instruction. ~~Letters of other official communication may also be provided the student, which may be utilized by the student for submission to the commission as evidence of satisfactory completion of the course. The letters will fully reflect the school name, the course title and number, educational units, and be dated and signed by an official of the school.~~

History: Amended effective July 1, 2022.

General Authority: NDCC 43-23-08, 43-23-08.2

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

70-02-03-02.1. Advertising.

1. Definition. As used in this section, the terms "advertise", "advertising", and "advertisement" ~~include all forms of representation, promotion, and solicitation disseminated in any manner and by any means of communication for any purpose related to real estate brokerage activity, including, at a minimum, advertising the sale or purchase of real estate or promotion of real estate brokerage services.~~ mean any communication whether written, printed, digital, audio, video, or by any other medium, made, authorized, or distributed by a real estate licensee or real estate brokerage firm for solicitation of business relating to any licensed activity contemplated under North Dakota Century Code chapter 43-23. However, the terms "advertise", "advertising", and "advertisement" do not include:

- a. Sponsorship of groups or events, or sponsorship of information about groups or events;
- b. Promotional items bearing the name or logo of a licensee or brokerage firm;
- c. News, features, publicity content, directories, or any other content, originating from a source not directly associated with or under the control of the licensee or brokerage firm;
- d. Signage located on the building of a brokerage firm or its branch offices; and
- e. A sign not on marketed real estate that directs the public to the marketed real estate.

2. Advertising requirements.

~~2.a.~~ Trade name. Advertising must be done in the real estate brokerage agency's trade name as licensed with the commission and the trade name must be equal to or greater than, in size and visibility, the name of any salesperson, associate broker, or team on the advertising. ~~Discipline of licensees based on failure to meet this size and visibility requirement will be delayed until January 1, 2023.~~ Size and visibility of the trade name does not include the real estate brokerage logo that is not the trade name or brokerage contact information. The name of any salesperson, associate broker, or team can be smaller than, in size and visibility, the trade name.

~~3.b.~~ Contact information. Advertising must include information on how the public can contact the real estate brokerage agency. Contact information may be accessible through a QR code, URL, digital link, or web link.

~~4.c.~~ Advertising by licensees. Advertising by licensees must be under the supervision of the designated broker. Such advertising may include a licensee's name and telephone number or other contact information, provided the real estate brokerage agency's registered business name or trade name and contact information are also clearly included as required in this section.

~~6.d.~~ Advertising of a broker or broker associate's own property. A real estate broker or broker associate may advertise, in the licensee's own name, property which is owned by the licensee, provided that following the licensee's name where it appears in the advertisement, the words "Owner/Licensed Broker" or "Owner/Licensed Broker Associate", as applicable, must also appear. The provisions of this subsection apply both to active broker and broker associate licensees and licensees whose license is on an inactive status.

~~7.e.~~ Advertising of a salesperson's own property. A real estate salesperson may advertise in that person's own name property which is owned by the salesperson, provided that following the name where it appears in the advertisement, the words "Owner/Licensed Salesperson" must also appear. The provisions of this subsection apply both to active salesperson licensees and licensees whose license is on an inactive status.

~~5.f.~~ Deception and misrepresentation prohibited. Advertising ~~and promotion~~ must be free from deception and shall not misrepresent the terms of the sale or purchase, real estate brokerage agency policies, or real estate brokerage services.

~~3.g.~~ Teams. A team is two or more licensees who work for the same brokerage under the supervision of the designated broker, work together on real estate transactions to provide real estate brokerage services, represent themselves to the public as being part of a team, and are designated by a team name. Advertising by a team must comply with all requirements of section 70-02-03-02.1. Teams may not advertise in any manner which suggests a team is an independent real estate brokerage firm.

~~h.~~ Inducements to potential clients. The details of inducements to potential clients must be fully disclosed to the potential clients. Full disclosure must include all details of the inducements with every mention of the inducement, and the information must be easily accessible.

History: Effective January 1, 1992; amended effective February 1, 2004; April 1, 2008; July 1, 2022.

General Authority: NDCC 28-32-02, 43-23-08

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

~~70-02-03-03. Commission split – Out of state.~~

~~A licensed broker in this state may divide or share a real estate commission with a licensed broker in another state if the latter broker does not carry on any of the negotiations in this state either by physically entering the state or by communicating with the broker electronically or through other media.~~

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

~~**General Authority:** NDCC 43-23-11.1(1)~~

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

70-02-03-04. Listings.

~~In instances where residential real property consists of separate dwelling units for one through four families, the licensee shall obtain a signed listing agreement in writing from the seller, properly identifying the listed property and containing all of the terms and conditions under which the property is to be sold; including the price, the commission to be paid, the signatures of all parties concerned, and definite expiration date prior to the time that the property is advertised or offered for sale. It shall contain no provision requiring a party signing the listing to notify the broker of the party's intention to cancel the listing after such definite expiration date. An "exclusive agency" listing or "exclusive right to sell" listing shall clearly indicate in the listing agreement that it is such an agreement and a copy shall be given to the owner at the time of signing. If the licensee chooses to represent both buyers and sellers in the same transaction, a separate dual agency disclosure statement must be provided in accordance with the provisions of section 70-02-03-15.1.~~

In instances where residential real property consists of separate dwelling units for one through four families, the licensee shall obtain a signed listing agreement in writing from the seller, properly identifying the listed property and containing all of the terms and conditions under which the property is to be sold; including:

1. The price;
2. The commission to be paid;
3. The signatures of all parties concerned; and
4. Definite expiration date prior to the time that the property is advertised or offered for sale.

It shall contain no provision requiring a party signing the listing to notify the broker of the party's intention to cancel the listing after such definite expiration date.

An "exclusive agency" listing or "exclusive right to sell" listing shall clearly indicate in the listing agreement that it is such an agreement and a copy shall be given to the owner at the time of signing. If the licensee chooses to represent both buyers and sellers in the same transaction, a separate dual agency disclosure statement must be provided in accordance with the provisions of section 70-02-03-15.1.

History: Amended effective September 1, 1994.

General Authority: NDCC 28-32-02.2

Law Implemented: NDCC 43-23-05

70-02-03-13. Personal interest.

1. A broker shall not, either directly or indirectly, buy for oneself property listed with the broker or as to which the broker has been approached by the owner to act as broker, nor shall the broker acquire interest in any other property therein, either directly or indirectly, without first making the broker's true position clearly known to the owner. Satisfactory written proof of this fact must be produced by the broker upon a request.
2. A broker shall not, **either directly or indirectly**, take an option to oneself, ~~either directly or indirectly~~, upon property for the sale of which the broker has been approached by the owner to act as a broker, without first making the broker's true position clearly known that the broker is now acting as a prospective buyer and is no longer acting as a broker or agent for the owner. Satisfactory proof of this must be produced by the broker upon request.
3. A salesperson shall not, **either directly or indirectly**, buy for oneself, ~~either directly or indirectly~~, property listed with the salesperson's broker, nor shall the salesperson acquire interest in any other property, either directly or indirectly, without first making the salesperson's true position clearly known to the owner, nor shall the salesperson take an option, **either directly or indirectly**, unto oneself from any such owner ~~or to anyone on the salesperson's behalf~~ upon any property without first making the salesperson's position known. Satisfactory written proof of these facts must be produced by the salesperson on request.
4. A real estate broker or salesperson who sells property in which the broker or salesperson owns an interest must make such interest known to the purchaser **in writing**.

History: Amended effective January 1, 1992; July 1, 2022.

General Authority: NDCC 28-32-02, 43-23-08, 43-23-11.1(1)

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

70-02-04-01. Continuing education defined.

As used in this chapter, continuing education, unless the context otherwise requires, means education in areas related to real estate, which has been approved by the commission, to maintain and improve the professional skills and upgrade the standard of all real estate licensees, and to qualify for license activation and renewal.

~~The commission considers courses in the following areas to be acceptable, but not limited to, when considering approval:~~

- ~~1. Real estate ethics;~~
- ~~2. Legislative issues that influence real estate practice;~~
- ~~3. The administration of licensing provisions of real estate law and the rules, including compliance and regulatory practices;~~
- ~~4. Real estate financing, including mortgages and other financing techniques;~~
- ~~5. Real estate market measurement and evaluation, including site evaluations, market data, and feasibility studies;~~
- ~~6. Real estate brokerage administration, including office management, trust accounts, and employee contracts;~~
- ~~7. Real property management, including leasing agreements, accounting procedures, and management contracts;~~
- ~~8. Real property exchange;~~
- ~~9. Land use planning and zoning;~~
- ~~10. Real estate securities and syndication;~~
- ~~11. Estate building and portfolio management;~~
- ~~12. Accounting and taxation as applied to real property;~~
- ~~13. Land development;~~
- ~~14. Real estate appraising;~~
- ~~15. Real estate marketing procedures;~~

~~16.—Marketing business opportunities;~~

~~17.—Business courses which relate to the practice of real estate;~~

~~18.—Agency representation; and~~

~~19.—Contracts.~~

History: Effective August 1, 1981; amended effective May 1, 1986; January 1, 2006; July 1, 2022.

General Authority: NDCC 28-32-02, 43-23-08, 43-23-08.2

Law Implemented: NDCC 43-23-08.2

70-02-04-02. Hours required.

To qualify for the renewal of a real estate license, each broker or salesperson must complete ~~twelve~~ the number of hours set by the commission of continuing education in approved courses every continuing education period. The continuing education period is ~~twelve months preceding the renewal application deadline date~~ set by the commission. The commission may require that a portion or all of the continuing education hours must be in one or more specific areas for salespersons or brokers. ~~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; July 1, 2010; October 1, 2015; July 1, 2022.

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

Law Implemented: NDCC 43-23-08.2

~~70-02-04-05. Nonqualifying courses.~~

~~The following courses will not be considered as qualifying for continuing education purposes:~~

- ~~1. Courses in general office and business skills, such as report writing.~~
- ~~2. Sales promotion or other meetings held in conjunction with the general business of the licensee's broker.~~
- ~~3. Any course certified by the use of a challenge examination. All students must complete the required number of classroom hours in order to receive credit.~~

~~The listing of the above courses does not limit the commission's authority to disapprove any application which fails to meet the standards for course approval.~~

~~**History:** Effective August 1, 1981; amended effective January 1, 1992; October 1, 1993; December 1, 1999; January 1, 2006; July 1, 2022.~~

~~**General Authority:** NDCC 28-32-02, 43-23-08, 43-23-08.2~~

~~**Law Implemented:** NDCC 43-23-08.2~~

~~70-02-04-06. Criteria for course approval.~~

~~The commission may approve education provided by a course sponsor, such as the commission, a public or private school, organization, association, person, corporation, society, or similar organization. The commission, when acting on an application for approval of a course, will consider the following criteria:~~

- ~~1. Courses will be eligible for approval only if the total instruction time is two hours or more.~~
- ~~2. A course sponsor shall certify to the best of its knowledge the attendance of each student at the offering. The course sponsor's criteria for measuring attendance shall be submitted in the application for course approval.~~
- ~~3. The course sponsor shall maintain, for a minimum of three years, records of students successfully completing any course.~~
- ~~4. Credit is earned based on in-person or virtual attendance or completion of online-only asynchronous courses.~~
- ~~5. Each course shall have a coordinator supervising the program.~~
- ~~6. All instructors in a real estate course shall complete and submit an instructor application for each course before teaching the course. Instructors must meet at least one of the following qualifications:
 - ~~a. A bachelor's degree in the field in which the person is to teach.~~
 - ~~b. A valid teaching credential or certificate from North Dakota or another state authorizing the holder to teach in the field of instruction being offered.~~
 - ~~c. Five years' full-time experience in a profession, trade, or technical occupation in the applicable field.~~
 - ~~d. Any combination of at least five years of full-time applicable field and college level education.~~~~

~~**History:** Effective August 1, 1981; amended effective October 1, 1993; July 1, 2022.~~

~~**General Authority:** NDCC 28-32-02, 43-23-08, 43-23-08.2~~

~~**Law Implemented:** NDCC 43-23-08.2~~

70-02-04-07. Application for approval of courses.

A course sponsor shall apply for approval of courses in a form prescribed by the commission. The application form shall include:

1. ~~The name, address, telephone number, and website of the course sponsor.~~
2. ~~The name and electronic mail address of the course coordinator.~~
3. ~~The title of the course.~~
4. ~~A description, copies, or examples of all materials to be distributed to the participants.~~
5. ~~The date and exact location of the course.~~
6. ~~The duration and time of course.~~
7. ~~A comprehensive, detailed outline of the subject matter together with the time sequence of each segment, faculty for each segment, and teaching technique used in each segment.~~
8. ~~A sample of any proposed advertising used for promotional purposes.~~
9. ~~The method of evaluation of the program.~~
10. ~~The procedure for measuring attendance.~~
11. ~~An instructor application for each instructor.~~
12. ~~A a fee not to exceed one hundred dollars per course as set by the commission.~~

History: Effective August 1, 1981; amended effective July 1, 2022.

General Authority: NDCC 28-32-02, 43-23-08, 43-23-08.2

Law Implemented: NDCC 43-23-08.2

~~70-02-04-08. Filing deadline for course approvals.~~

~~Application for course approvals must be filed thirty days preceding the proposed public offering.~~

~~History:~~ Effective August 1, 1981.

~~General Authority:~~ NDCC 43-23-08.2

~~Law Implemented:~~ NDCC 43-23-08.2

70-02-04-10. Material change.

The course coordinator or instructor of each approved real estate offering shall promptly notify the commission of any material changes contained in the application for approval or attached exhibits. ~~Changes shall be deemed acceptable to the commission if no action has been taken after fourteen days from the date received by the commission.~~

History: Effective August 1, 1981; amended effective July 1, 2022.

General Authority: NDCC 28-32-02, 43-23-08, 43-23-08.2

Law Implemented: NDCC 43-23-08.2

70-02-04-11. Suspension, revocation, or denial of course approval.

The commission may deny, suspend, or revoke approval of a real estate course, coordinator, or instructor if it is determined that it is not in compliance with the statute or rules and regulations. ~~If disciplinary action is taken a written order of suspension, revocation, or denial of approval will be issued.~~

History: Effective August 1, 1981; amended effective July 1, 2022.

General Authority: NDCC 28-32-02, 43-23-08, 43-23-08.2

Law Implemented: NDCC 43-23-08.2

70-02-04-13. Substantively identical courses.

Courses may not be taken for continuing education **credit** more than once during any continuing education period, unless material has been significantly changed, or updated, or both.

History: Effective August 1, 1981; amended effective December 1, 1999; July 1, 2010; July 1, 2022.

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

Law Implemented: NDCC 43-23-08.2

70-02-04-15. Exemptions from continuing education requirement.

Any salesperson, broker, or broker applicant who completed the prerequisite ~~ninety hours of~~ course of study to obtain a license is exempt from the continuing education requirement for the first license renewal ~~after completing the prerequisite course of study.~~ ~~Any broker, upon successful completion of the real estate broker licensing examination is exempt from the continuing education requirement for only the 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; July 1, 2010; July 1, 2022.

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

Law Implemented: NDCC 43-23-08.2

70-02-04-19. Certificate of accreditation.

A certificate of accreditation shall be granted for each course of study approved by the commission. This certificate shall remain valid for a ~~two-year~~ period of time set by the commission at which time the course will be reviewed and, if approved, will continue valid for the next ~~two-year~~ period unless suspended or revoked.

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

General Authority: NDCC 43-23-08.2

Law Implemented: NDCC 43-23-08.2

~~70-02-04-21. Continuing education certificate of completion.~~

~~All course sponsors shall provide an individual certificate of completion to each licensee upon completion of the course under the following conditions:~~

- ~~1. No certificate of completion shall be issued to a licensee who is absent for more than ten percent of the classroom hours.~~
- ~~2. The certificate shall contain information as to the licensee's name, course title, course number, date, location of course, number of approved credit hours, and course sponsor or instructor.~~
- ~~3. The licensee shall retain the certificate. The responsibility for recordkeeping will remain with the licensee.~~
- ~~4. The North Dakota real estate commission shall not be required to maintain a list of licensees and their completed courses of education.~~

History: ~~Effective August 1, 1981; amended effective December 1, 1999; January 1, 2006; July 1, 2022.~~

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

Law Implemented: ~~NDCC 43-23-08.2~~

70-02-05-01. Definitions.

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

1. "Aggregate limit" means a provision in an insurance contract limiting the maximum liability of an insurer for a series of losses in a given time period, such as the policy term.
2. "Equivalent coverage" means coverage obtained independently of the group plan available from the commission and subject to the terms and conditions as set forth in this chapter.
3. "Extended reporting period" means a designated period of time after a claims-made policy has expired during which a claim may be made and coverage triggered as if the claim has been made during the policy period.
4. "Licensee" means any active individual broker, broker associate, or salesperson.
5. "Prior acts coverage" means claims that are made during a current policy period, but the act or acts causing the claim or injuries for which the claim is made occurred prior to the inception of the current policy period.
6. "Proof of coverage" means the group plan carrier has submitted to the commission a list of all policyholders, or a licensee has submitted to the commission a certificate of equivalent coverage with a list of all licensees covered by the policy on a form prescribed by the commission.
7. "Qualified insurance carrier" means an insurance carrier:
 - a. Which for the entire term of its contract shall provide the group plan of errors and omissions insurance contemplated by these rules, maintains an A.M. Best financial size category of class VI or higher;
 - b. Which shall remain for the policy term authorized by the North Dakota insurance department to do business in North Dakota as an insurance carrier;
 - c. Which is and will remain for the policy term qualified and authorized by the North Dakota insurance department to write policies of errors and omissions insurance in North Dakota of the type contemplated by these rules;
 - d. Which will collect premiums, maintain records, and report names of those insured and a record of claims to the commission on a timely basis and at no cost to the state;

- d.e. Which, after ~~competitive bidding~~ a review process, has been notified by the commission that it ~~is the successful bidder~~ has been selected as the carrier for the group plan to provide the errors and omissions insurance contemplated by these rules; and
- e.f. Which has entered into a contract to provide said group errors and omissions plan in conformity with said contract, these rules, and the North Dakota license law.

~~The insurance carrier will collect premiums, maintain records, and report names of those insured and a record of claims to the commission on a timely basis and at no cost to the state.~~

- 8. "Retroactive date" means the date when the first real estate errors and omissions coverage was effective insuring the named insured on a claims-made basis and since which time the insured has been continuously insured.
- 9. "Single-limit liability" means the maximum limit payable, per licensee, for damages arising out of the same error, omission, or wrongful act.

History: Effective February 1, 2002; amended effective July 1, 2022.

General Authority: NDCC 28-32-02, 43-23-19

Law Implemented: NDCC 43-23-19

70-02-05-03. Minimum standards.

The group policy obtained by the commission shall provide to each individual licensee, at a minimum, the following terms of coverage:

1. Not less than one hundred thousand dollars single-limit liability coverage for each licensee per occurrence or claim made, not including costs for investigation or defense;
2. An annual aggregate limit of not less than five hundred thousand dollars per licensee, **not including costs for investigation or defense;**
3. A deductible amount for each occurrence of not more than one thousand dollars for single-limit liability coverage and one thousand dollars maximum additional deductible for defense and investigation;
4. An extended reporting provision of ninety days and an option to purchase an additional three years extended reporting provision for a premium not to exceed two hundred percent of the premium charged for the last year of the terminating coverage;
5. Coverage under this section for covered acts in any state, United States territory, or Canada in which a covered individual, ~~domiciled in North Dakota,~~ holds a license;
6. Stacking of benefits;
7. Proration of premiums for coverage that is purchased during the course of a calendar year but with no provision for refunds of unearned premiums;
8. The ability of a licensee, upon payment of an additional premium, to obtain higher or excess coverage or to purchase additional coverages from the group carrier as may be determined by the carrier;
9. That coverage is individual and license-specific and will cover the licensee regardless of changes in employing broker; and
10. Prior acts coverage shall be offered to licensees with continuous past coverage.

History: Effective February 1, 2002.

General Authority: NDCC 43-23-19

Law Implemented: NDCC 43-23-19