

Sixty-eighth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1190

Introduced by

Representatives Louser, Boschee, Cory, Koppelman, Mock, Steiner, VanWinkle

Senators Larsen, Larson

1 A BILL for an Act to create and enact a new section to chapter 43-23 of the North Dakota
2 Century Code, relating to real estate wholesale buyers and sellers; and to amend and reenact
3 sections 43-23-06.1 and 43-23-07 of the North Dakota Century Code, relating to practicing as a
4 real estate broker or salesperson.

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

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

8 **43-23-06.1. Definitions.**

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

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

- 1 b. When two or more licensees, licensed to the same broker, each represents a
2 party to the real estate transaction.
- 3 "Dual agency" does not exist unless both the seller and the buyer in a real estate
4 transaction have written agency agreements with the same real estate brokerage firm.
5 For purposes of "dual agency" a subagency arrangement is not a written agency
6 agreement.
- 7 7. "Licensee" means a real estate broker, an associate real estate broker, or a real estate
8 salesperson who is associated with a real estate brokerage firm.
- 9 8. "Real estate", "real property", "realty", or words of like import, means any interest or
10 estate in land, including leaseholds, whether such interest or estate is corporeal,
11 incorporeal, freehold, or nonfreehold, and whether situated in this state or elsewhere;
12 provided, however, that the meaning as used in this chapter does not include oil, gas,
13 or mineral leases, nor does it include any other mineral leasehold, mineral estate, or
14 mineral interest of any nature whatsoever.
- 15 9. "Real estate broker", or "broker", means any person that, for another, for a fee,
16 commission, salary, or other consideration, or with the intention or expectation of
17 receiving or collecting such compensation from another, engages in or offers or
18 attempts to engage in, either directly or indirectly by a continuing course of conduct or
19 by a single act or transaction, any of the following acts:
- 20 a. Lists, offers, attempts, or agrees to list real estate or any interest in that real
21 estate, or any improvements affixed on that real estate for sale, exchange, or
22 lease.
- 23 b. Sells, exchanges, purchases, or leases real estate or any interest in that real
24 estate, or any improvements affixed on that real estate.
- 25 c. Offers to sell, exchange, purchase, or lease real estate or any interest in that real
26 estate, or any improvements affixed on that real estate.
- 27 d. Negotiates or offers, attempts, or agrees to negotiate the sale, exchange,
28 purchase, or leasing of real estate or any interest in that real estate, or any
29 improvements affixed on that real estate.
- 30 e. Buys, sells, offers to buy or sell, or otherwise deals in options on real estate or
31 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, calculated to result in the sale,
7 exchange, or leasing of real estate or any interest in that real estate, or any
8 improvements on that real estate.
- 9 i. Publicly markets for sale an equitable interest in a contract for the purchase of
10 real property between a property owner and a prospective purchaser.
- 11 10. "Real estate brokerage firm" means a person that is providing real estate brokerage
12 services through that person's licensees and which is licensed by the commission as a
13 real estate brokerage firm.
- 14 11. "Real estate salesperson" means any person that for a fee, compensation, salary, or
15 other consideration, or in the expectation or upon the promise of that compensation, is
16 employed or engaged by a licensed real estate broker to do any act or deal in any
17 transaction as provided in subsection 69 for or on behalf of such licensed real estate
18 broker.

19 **SECTION 2. AMENDMENT.** Section 43-23-07 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **43-23-07. Real estate brokers and salespersons - Exceptions.**

- 22 1. The term "real estate broker" or "real estate salesperson" does not include:
- 23 4. a. Any person, partnership, association, corporation, or limited liability company
24 who is a bona fide owner or lessor or who accepts or markets leasehold interests
25 in residential or agricultural property and performs any of the aforesaid acts with
26 reference to property owned or leased by them, nor does it apply to regular
27 employees thereof, when the acts are performed in the regular course of or as an
28 incident to the management of the property and the investment therein.
- 29 2. b. An attorney at law, admitted to practice in this state, handling sales of real estate
30 in the course of estate or guardianship administration in district court, or trust
31 administration, bankruptcy proceedings, receiverships, or like actions subject to

1 approval by a court of competent jurisdiction, or sales of real estate arising in the
2 usual course of the practice of law.

3 ~~3.~~ c. Any person selling real estate as an auctioneer, provided the sale is advertised
4 as a bona fide public auction.

5 ~~4.~~ d. Any bank or trust company or any of its officers or employees in the performance
6 of their duties as an officer or employee of the bank or trust company.

7 ~~5.~~ e. Any person holding in good faith a duly executed power of attorney from the
8 owner, authorizing a final consummation and execution for the sale, purchase,
9 lease, or exchange of real estate when such acts are not of a recurrent nature
10 and done with the intention of evading this section.

11 ~~6.~~ f. Any person while acting as a receiver, trustee, administrator, executor, guardian,
12 or under court order, or while acting under authority of a deed, trust, or will.

13 ~~7.~~ g. Public officers while performing their duties.

14 2. This section does not exempt from the definition of "real estate broker" or "real estate
15 salesperson" for consideration publicly marketing for sale an equitable interest in a
16 contract for the purchase of real property between a property owner and a prospective
17 purchaser.

18 **SECTION 3.** A new section to chapter 43-23 of the North Dakota Century Code is created
19 and enacted as follows:

20 **Wholesale buyers and sellers - Disclosure.**

21 1. As used in this section:

22 a. "Residential real property" means real property with fewer than five dwelling
23 units.

24 b. "Wholesaler" means a person that enters an agreement to make income or profit
25 from the transfer of or equitable interest in residential real property.

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

30 3. Notwithstanding any other provision contained in a contract for sale of residential real
31 property, if a wholesaler violates this section, the seller may cancel the contract for

- 1 sale at any time before the close of escrow without penalty and may retain any earnest
2 money paid by the wholesaler.
- 3 4. Notwithstanding any other provision contained in the contract for sale, if a wholesaler
4 violates this section, the buyer may cancel the contract for sale at any time before the
5 close of escrow without penalty and must be refunded all earnest money paid by the
6 buyer.