Sixty-second
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1430

Introduced by

Representatives Louser, Klemin, Weiler

Senators Hogue, J. Lee

A BILL for an Act to amend and reenact sections 43-23-06.1 and 43-23-12.1 of the North Dakota Century Code, relating to definitions and the duties of real estate brokerage firms.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

43-23-06.1. Definitions.

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

1. "Appointed agent" means a licensee appointed by a designated broker of the licensee's real estate brokerage firm to act solely for a client of that brokerage firm to the exclusion of other licensees of that brokerage firm.
2. "Client" means a person ~~who~~that has entered ~~into~~ a written agency agreement with a real estate brokerage firm.
3. "Commission" means the North Dakota real estate commission.
4. "Customer" means a buyer, prospective buyer, seller, lessee, or lessor that is not represented by that real estate brokerage firm in a real property transaction.
5. "Designated broker" means a licensee designated by a real estate brokerage firm to act on behalf of the brokerage firm.

~~5.~~6. "Dual agency" means a situation in which a real estate brokerage firm~~,~~ or ~~its~~the real estate brokerage firm's licensees~~,~~ owe a duty to more than one party in a real estate transaction. Dual agency is established only as follows:

a. When one licensee represents both the buyer and the seller in a real estate 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.

~~6. "Person" includes individuals, corporations, limited liability companies, partnerships, trusts, associations, cooperatives, or other firms or entities, foreign or domestic.~~

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.

~~8.~~9. "Real estate broker", or "broker", means any person ~~who~~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 ~~therein~~in that real estate, or any improvements affixed ~~thereon~~on that real estate for sale, exchange, or lease.

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

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

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

f. Who is a licensee under this chapter and performs any of the acts set out in this subsection while acting in the licensee's own behalf.

g. Advertises or holds out as being engaged in the business of buying, selling, exchanging, or leasing of real estate or any interest ~~therein~~in that real estate, or any improvements ~~thereon~~on that real estate.

h. Assists or directs in the procuring of prospects, calculated to result in the sale, exchange, or leasing of real estate or any interest ~~therein~~in that real estate, or any improvements ~~thereon~~on that real estate.

~~9.~~10. "Real estate brokerage firm" means a person that is providing real estate brokerage services through that person's licensees and which is licensed by the commission as a real estate brokerage firm.

~~10.~~11. "Real estate salesperson" means any ~~person~~individual who for a fee, compensation, salary, or other consideration, or in the expectation or upon the promise ~~thereof~~of that compensation, is employed or engaged by a licensed real estate broker to do any act or deal in any transaction as provided in subsection ~~5~~6 for or on behalf of such licensed real estate broker.

SECTION 2. AMENDMENT. Section 43-23-12.1 of the North Dakota Century Code is amended and reenacted as follows:

43-23-12.1. Real estate brokerage firm - Duties required.

1. A real estate brokerage firm and ~~its~~the real estate brokerage firm's licensees, ~~that~~which provide services through a written agency agreement for a client, are bound to that client by the duties of loyalty, obedience, disclosure, confidentiality, reasonable care, diligence, and accounting, subject to the provisions of this chapter and subject to any rules adopted under this chapter. The agency relationship, which must be established through a written agency agreement, may be a seller ~~agent~~agency, a buyer ~~agent~~agency, ~~or~~ a ~~subagent~~dual agency, an appointed agency, a subagency, or~~,~~ ~~if~~ another form of agency relationship. If a different relationship, including a nonagency relationship with a customer, between the real estate brokerage firm and the person

for ~~whom~~which the real estate brokerage firm performs the services is intended, ~~including a dual agent,~~ the relationship must be disclosed in writing pursuant to rules adopted by the board.

2. If a buyer, prospective buyer, or seller is not represented by a real estate brokerage firm in the real property transaction, that buyer or seller remains a customer, and, as to that customer, the real estate brokerage firm and the real estate brokerage firm's licensees are nonagents that owe the following legal duties: to perform customary acts typically performed by real estate licensees in assisting a transaction to the transaction's closing or conclusion if these acts are to assist the customer for which the services are directly provided; to perform these acts with honesty and good faith; and to disclose to the customer any adverse material facts actually known by the licensee which pertain to the title of the real property, the physical condition of the real property, and defects in the real property. These limited duties are subordinate to any duties the real estate brokerage firm and the real estate brokerage firm's licensees owe to a client in the same transaction.

3. Unless otherwise agreed in writing, a real estate brokerage firm and the real estate brokerage firm's licensees are not obligated to a client, to a customer, or to any other person to discover defects in any real property, to verify the ownership of any real property, or to independently verify the accuracy or completeness of any statement or representation made by any person other than the real estate brokerage firm and the real estate brokerage firm's licensees involved in the transaction under question.

4. Unless the licensee is directly involved in a transaction regarding the affected real property, this section does not result in imputing knowledge, regarding the affected real property, of one licensee within a real estate brokerage firm to another licensee within the same real estate brokerage firm or in imposing a duty upon a licensee within a real estate brokerage firm to disclose facts that are known by that licensee regarding the affected real property to another licensee within the same real estate brokerage firm.

5. If a real estate brokerage firm and the real estate brokerage firm's licensees represent two or more buyers or lessees as clients that desire to make an offer for the purchase or lease of the same real property, the real estate brokerage firm and the real estate

1 brokerage firm's licensees do not breach any duty by assisting such clients with
2 multiple offers, even though the interests of such clients are competing, and are not
3 required to disclose the existence of competing offers, except as otherwise set forth
4 under this subsection. The real estate brokerage firm and the real estate brokerage
5 firm's licensees shall continue to honor agency duties to such clients, except as limited
6 under this subsection. However, if an individual licensee has a written agency
7 agreement with two or more buyers that desire to make an offer for the purchase or
8 lease of the same real property, that licensee shall disclose to those competing buyer
9 clients the fact that a competing written offer has been submitted by another buyer
10 client of that licensee,
11 6. If a real estate brokerage firm and the real estate brokerage firm's licensees represent
12 two or more sellers or lessors as clients that desire to offer competing real property for
13 sale or lease, the real estate brokerage firm and the real estate brokerage firm's
14 licensees may not breach any duty to such clients by performing such services, even
15 though the interests of such clients are competing. In such event, the real estate
16 brokerage firm and the real estate brokerage firm's licensees shall continue to honor
17 agency duties to such clients, except as limited under this subsection.