

CHAPTER 70-02-03 LICENSEE RESPONSIBILITIES

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70-02-03-01. Application of licensee responsibilities.

The commission shall have the power to investigate and to suspend or revoke a broker's or salesperson's license upon violation by a licensee of any provisions of the licensee responsibilities.

History: Amended effective January 1, 1992; April 1, 2008.

General Authority: NDCC 28-32-02

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

70-02-03-02. Advertising.

Repealed effective January 1, 1992.

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 conducted by mail, telephone, the internet, the world wide web, electronic mail, electronic bulletin board, or other similar electronic common carrier systems, business cards, signs, television, radio, magazines, newspapers, and telephonic greetings or answering machine messages.
2. 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 prominently displayed.

3. Contact information. Advertising must include information on how the public can contact the real estate brokerage agency.
4. 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.
5. 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.
6. A real estate broker may advertise, in the licensee's own name, property which is owned by the licensee, provided that immediately following the licensee's name where it appears in the advertisement, the words "Owner/Licensed Broker" must also appear. The provisions of this subsection apply both to active broker licensees and licensees whose license is on an inactive status.
7. A real estate salesperson may advertise in that person's own name property which is owned by the salesperson, provided that immediately 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.

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

General Authority: NDCC 28-32-02

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.

History: Amended effective September 1, 1994.

General Authority: NDCC 28-32-02.2

Law Implemented: NDCC 43-23-05

70-02-03-05. Listing contracts must include commission amount.

All listing contracts or sales contracts must state the amount of brokerage agreed; either a specific amount or a specific percentage.

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

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

70-02-03-05.1. Buyer's broker agreements.

In instances where residential real property consists of separate dwelling units for one through four families, a licensee must obtain a signed buyer's broker agreement from a buyer before performing any act as a buyer's representative. All buyer's broker agreements must be in writing and must include:

1. A definite expiration date.
2. The amount of commission or other compensation.
3. A clear statement explaining the services to be provided to the buyer, and the events or condition that will entitle the licensee to a commission or other compensation.
4. If the licensee chooses to represent both buyers and sellers in the same transaction, a separate dual agency disclosure statement in accordance with the provisions of section 70-02-03-15.1.

History: Effective September 1, 1994.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 43-23-05

70-02-03-06. Offer to purchase.

A broker or salesperson shall promptly tender to the seller every written offer to purchase obtained on the property involved and, upon obtaining a proper acceptance of the offer to purchase, shall promptly deliver true executed copies of same, signed by the seller and purchaser, to both seller and purchaser. All brokers and salespersons shall make certain that all of the terms and conditions of the real estate transaction are included in the offer to purchase. Brokers and salespersons shall also make certain that any changes in the text of the offer made by the seller are agreed to and initiated by the offeror in the first place before proceeding with the transaction. If any changes made are material or extensive, the entire offer or contract should be rewritten.

History: Amended effective January 1, 1992.

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

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

70-02-03-07. Closing statements.

In every real estate sales transaction wherein the closing is handled by an attorney, bank, savings and loan association, or similarly recognized individual or group other than a real estate broker, it shall be the responsibility of the broker involved to see the party or parties represented by the broker receive a complete, detailed closing statement showing all of the receipts and disbursements handled in such transaction. The broker must retain true copies of such statements in the broker's files.

History: Amended effective April 1, 2008.

General Authority: NDCC 28-32-02

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

70-02-03-08. Legal advice.

No licensee should engage in activities that constitute the practice of law and should recommend that title be examined and legal counsel be obtained when the interest of either party requires it.

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

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

70-02-03-09. Use of false or misleading documents.

Any broker or salesperson licensed by the commission who uses, proposes the use of, agrees to the use of, or knowingly permits the use of any contract of sale, earnest money agreement, loan application, mortgage, note, or other document, which is not made known to the prospective lender or the loan guarantor, to enable the purchaser to obtain a larger loan than the true sales price would allow, or to enable the purchaser to qualify for a loan which the purchaser otherwise could not obtain, shall be deemed to have engaged in a course of misconduct permitting suspension or revocation of the broker's or salesperson's license as a broker or salesperson.

History: Amended effective August 1, 1981; January 1, 1992.

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

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

70-02-03-10. For sale signs.

No signs shall be placed on any property for its sale or lease without the consent of the owner, or the owner's duly authorized agent.

History: Amended effective April 1, 2008.

General Authority: NDCC 28-32-02

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

70-02-03-11. Negotiate listings.

A real estate licensee shall not negotiate a sale, exchange, lease, or listing contract of real property directly with an owner for compensation from the owner or a purchase, exchange, lease, or exclusive right to buy contract with a buyer, if the licensee knows that the owner or the buyer has a written unexpired contract in connection with the property which grants an exclusive right to sell to another broker, or which grants an exclusive agency, or an exclusive right to buy, to another broker. This section does not preclude a licensee from entering into an agency contract with an owner or a buyer who is a party to an existing agency contract when the contact culminating in such a contract is initiated by the owner or buyer, and not by the licensee, and provided that such agency contract does not become effective until after the expiration or release of any existing agency contract.

History: Amended effective March 1, 2002.

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

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

70-02-03-12. Refund of purchaser's money.

When for any reason the owner fails, refuses, neglects, or is unable to consummate the transaction as provided for in the contract, and through no fault or neglect of the purchaser the real estate transaction cannot be completed, the broker has no right to any portion of the deposit money which was deposited by the purchaser, even though the commission is earned, and such deposit should be returned to the purchaser at once and the broker should look to the owner for the broker's compensation.

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

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

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 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 buy for oneself, either directly or indirectly, property listed with the salesperson's employer 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 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.

History: Amended effective January 1, 1992.

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

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

70-02-03-14. Accepting nonnegotiable instruments.

A broker or salesperson shall not accept any note or any nonnegotiable instrument or anything of value not readily negotiable as a deposit on a contract or offer to purchase without the knowledge and permission of the broker's or salesperson's principal.

History: Amended effective January 1, 1992.

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

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

70-02-03-15. Agency disclosure required.

In all real estate transactions the licensee is the agent of the seller unless all parties otherwise agree in writing. The agency relationship must be disclosed in writing to the parties before the signing of a written contractual agreement. The disclosure language must state at least the following information in substantially this form:

"I _____, a real estate licensee, stipulate that I am representing the _____ (Buyer/Seller) in this transaction.

Licensee"

Each licensee in the transaction shall make such a disclosure.

This section applies only to transactions involving agricultural and commercial property, residential property that provides separate dwelling units for five or more families, and commercial leaseholds. Residential property that provides separate dwelling units for one through four families is subject to the agency disclosure requirement of section 70-02-03-15.1.

History: Effective January 1, 1988; amended effective September 1, 1994.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 43-23-05

70-02-03-15.1. Licensee to disclose agency relationships - Duty of confidentiality.

1. As used in this section, unless the context or subject matter otherwise requires:
 - a. "Dual agency" means a situation in which a licensee owes a duty to more than one party to the real estate transaction. Dual agency is established as follows:
 - (1) When one licensee represents both the buyer and the seller in a real estate transaction; or
 - (2) When two or more licensees, licensed to the same broker, each represent a party to the real estate transaction.
 - b. "Party to the real estate transaction" includes any individual or individuals who are a seller or buyer, or potential seller or buyer.
 - c. "Real estate transaction" means any transaction involving residential real property that consists of separate dwelling units for one through four families. "Real estate transaction" does not include transactions involving agricultural or commercial property, residential property that provides separate dwelling units for five or more families, or commercial leaseholds.
2. In all real estate transactions in which the licensee represents any party to a real estate transaction, the licensee must make an affirmative written disclosure identifying which party that person represents in the transaction. The disclosure must be made at the time of the first substantive contact between the licensee and any party to the real estate transaction. The disclosure must be represented by a separate written document, and offered to the party to the real estate transaction for signature. True copies of the disclosure form must be retained in the broker's file. As used in this subsection, the term "substantive contact" means:
 - a. When representing the seller, prior to the signing of a listing agreement.
 - b. When representing a buyer, prior to the signing of a buyer's broker agreement.
 - c. As to all other parties, such as potential buyers or sellers, who are not represented by the licensee, prior to the discussion of personal financial information or the commencement of negotiations, which could affect that party's bargaining position in the transaction. However, a licensee shall have complied with the provisions of this subsection if, in those circumstances where it is impossible as a practical matter to obtain a signed written disclosure statement from a party at the time of the first substantive contact, such as telephone contact with an absent party, the licensee orally discloses the status of the licensee's representation and, as soon as practicable thereafter, makes the written disclosure required by this subsection.
 - d. As to any change in the licensee's representation, including dual agency, that makes the initial disclosure of representation incomplete, misleading, or inaccurate, a new disclosure must be made at once to any party to the transaction.

- e. Nothing in this section requires written notice to each prospective buyer who comes to an open house display of real property; provided, however, the licensee, by sign, poster, distributed listing literature, or property description form, conspicuously discloses the licensee's agency relationship.
3. Each licensee owes a duty of confidentiality to a party being represented in a real estate transaction. The following information may not be disclosed without the informed, written consent of the party being represented:
 - a. That the party being represented is willing to pay more than the purchase price or lease price offered for the property.
 - b. That the party being represented is willing to accept less than the purchase price or lease price being asked for the property.
 - c. What the motivating factors are for the buying, selling, or leasing of the property by the party being represented.
 - d. That the party being represented will agree to terms for financing of the property other than those which are offered.
 4. A licensee shall also keep confidential all information received from a party being represented, which has been made confidential by request or instruction of that party.
 5. The obligation of confidentiality set forth in subsections 3 and 4 continues in effect during the time a party is being actively represented, and continues on after the termination, expiration, or completion of the representation until one of the following occurs:
 - a. The party being represented permits the disclosure by subsequent word or conduct.
 - b. Disclosure is required by law, by court order, or order of the commission.
 - c. The information is made public through disclosure from a source other than the licensee.
 6. The provisions of subsections 3 and 4 do not serve to permit or require a licensee to keep confidential any material defects in the property of which the licensee is aware or which would constitute fraudulent misrepresentation unless disclosed.
 7. The written disclosure required by this section must advise a party to the real estate transaction of the different types of representation that are available. The explanation must include information pertaining to how that party's interest shall be represented if the party chooses the licensee to act as the owner's agent, the buyer's agent, or as a dual agent. The written disclosure forms, in clearly understood terms, must inform the party to the transaction as follows:
 - a. If the party chooses seller representation, it must be explained that this relationship typically arises from entering into a listing agreement, or by agreeing to act as a subagent through the listing agency. A subagent may work in a different real estate office. A listing agent or subagent can assist the buyer but does not represent that party. A listing agent or subagent is required to place the interest of the owner first, and a buyer should not tell a listing agent or subagent anything that the buyer would not want the owner to know, because the listing agent or subagent must disclose any material information to the owner. Also, it must be explained that if the real estate brokerage firm and its licensees represent two or more sellers as clients who both desire to offer competing real property for sale or lease, the real estate brokerage firm and its licensees may do so without breaching any duty to such clients. In such an event, the brokerage

firm and its licensees still owe agency duties to the clients, except as limited in this subsection.

- b. If the party chooses buyer representation, it must be explained that the licensee typically becomes the buyer's agent by entering into an agreement for such representation. A buyer's agent may assist the owner but does not represent the owner. A buyer's agent must place the interest of the buyer first, and the owner should not tell a buyer's agent anything the owner would not want the buyer to know because the buyer's agent must disclose any material information to the buyer. Also, it must be explained that if the real estate brokerage firm and its licensees represent two or more buyers as clients who desire to make an offer to purchase the same real property, the brokerage firm and its licensees do not breach any duty by assisting such clients with multiple offers even though the interest of such clients are competing. However, if the same licensee represents two or more buyers who desire to make an offer to purchase the same property, that licensee must disclose to buyer clients the fact that a competing written offer has been submitted by another buyer client of that licensee without disclosing the identity of the other buyer client or the terms of the offer. In such an event, the brokerage firm and its licensees still owe agency duties to the clients, except as limited in this subsection.
- c. If the party selects dual agency, it must be explained that the licensee must enter into a written agreement obtaining the consent of both parties before such representation is authorized. This agreement must set forth who will be responsible for paying the licensee's fee. Under this arrangement, the licensee is required to treat both parties honestly and impartially so as not to favor one over the other. Unless written permission from the appropriate party is obtained, the licensee is prohibited from disclosing that the owner will accept less than the asking price, that the buyer will pay a price greater than that submitted in the written offer, or any other information of a confidential nature or which the party has instructed the licensee not to disclose. Potential conflicts exist when the licensee represents more than one party, and the licensee's activities may be more limited. The licensee is required to inform each party of any facts that would affect a party's decision to permit representation of both the owner and buyer. This includes any arrangement by which the licensee will or expects to represent a party in a future transaction.
- d. It must be explained that a duty of loyalty and faithfulness are owed to the party or parties to the transaction with whom the licensee has an agency relationship, and the licensee must inform that party of all important information which might affect a decision concerning the real estate transaction. This includes disclosure of any material facts to the buyer that may adversely and significantly affect that person's use or enjoyment of the property. It also includes disclosure of any information to either party which may indicate that one of the parties does not intend to perform in accordance with the terms of the purchase agreement or any other written agreement or obligation. However, it must be explained that knowledge of one licensee of a real estate brokerage firm regarding an affected real property is not imputed to another licensee in the same brokerage firm and no duty is imposed upon a licensee in 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. Also, it must be explained that unless otherwise agreed in writing, a real estate brokerage firm and its licensees are not obligated to a client, a customer, or 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.

- e. It must be explained that a licensee must deal honestly with any party to a real estate transaction, regardless of whether the party is represented by that licensee.
8. No person required to be licensed by North Dakota Century Code chapter 43-23 may maintain any action to recover any commission, fee, or other compensation with respect to the purchase, sale, lease, or other disposition or conveyance of real property, or with respect to the offer, negotiation, or attempt to negotiate any sale, lease, purchase, or other disposition, unless that person's agency relationship has been disclosed to the party or parties to the transaction in accordance with the requirements of this section.
9. The commission may approve a specific form or forms to implement the provisions of this section.

History: Effective September 1, 1994; amended effective April 1, 2012.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 43-23-05

70-02-03-15.2. Licensee to disclose nonagency relationship.

In all real estate transactions in which the licensee performs services for a customer, as that term is defined by North Dakota Century Code section 43-23-06.1, the licensee must disclose the nonagency relationship in writing to the customer. This document must be signed by the customer prior to the licensee performing any services for the customer. A copy of the signed written disclosure must be retained in the broker's file. The written disclosure must explain that as to a customer the real estate brokerage firm and its licensees are nonagents that owe to the customer only limited legal duties. These limited legal duties are to perform the customary acts typically performed by real estate licensees in assisting a transaction to the transaction's closing or conclusion 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. The real estate brokerage firm and its licensees do not owe the agency duties of loyalty, obedience, disclosure, confidentiality, reasonable care, diligence, and accounting to the customer. The disclosure must also explain that if the brokerage firm and its licensees represent another party in the same real estate transaction, the licensee is required to place the interest of the represented client first.

History: Effective April 1, 2012.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 43-23-05

70-02-03-16. Licensee acting in own behalf to set forth terms and conditions and make disclosure.

A broker or salesperson acting in his own behalf shall disclose his licensed status in writing to any person with whom he purchases, sells, exchanges, or options real property. All the terms and conditions of the transaction as agreed upon must be in writing, properly executed, and a copy furnished to such person. Copies of the disclosure of his licensed status and of the documents containing the terms and conditions of the transaction must be retained by the broker or salesperson and made available to the commission upon request.

History: Effective September 6, 1989; amended effective January 1, 1992.

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

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

70-02-03-17. Designated broker - Appointed agent.

1. **Appointed agent procedures and disclosure.**

- a. A designated broker appointing a licensee to act as an agent of a client shall take ordinary and necessary care to protect confidential information disclosed by the client to the appointed agent.
- b. An appointed agent may reveal to the agency's designated broker confidential information of a client for seeking advice or assistance for the benefit of the client about a possible transaction. The designated broker shall treat confidential information as such and may not disclose such information unless otherwise requested or permitted by the client who originally disclosed the confidential information.

2. **Appointed agent - Written disclosure.**

- a. An appointed agent shall disclose in writing such appointment to the client before entering into a brokerage agreement and shall include, at a minimum, the following provisions:
 - (1) The name of the appointed agent;
 - (2) A statement that the appointed agent will be the client's agent and will owe the client fiduciary duties, which among other things, include the obligation not to reveal confidential information obtained from the client to other licensees, except to the designated broker for seeking advice or assistance for the benefit of the client;
 - (3) A statement that the agency may be representing both the seller and the buyer in connection with the sale or purchase of real estate;
 - (4) A statement that other licensees may be appointed during the term of the brokerage agreement should the appointed agent not be able to fulfill the terms of the brokerage agreement or as by agreement between the designated broker and client. An appointment of another agent as a new or additional agent does not relieve the first appointed agent of any of the fiduciary duties owed to the client. At the time of the appointment of the new or additional agents, the designated broker must comply with the provisions of this section; and
 - (5) A section for the client to consent or not consent, in writing, to the appointment.

3. **Appointed agent's duty to the designated broker.** In any appointed agent transaction, the appointed agent shall keep the designated broker fully informed of all activities conducted by the appointed agent during the transaction and shall notify the designated broker of any other activities that might affect the responsibility of the designated broker.

History: Effective April 1, 1996; amended effective July 1, 2010.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 43-23-12.3