

**SENATE BILL NO. 2208**

Introduced by

Senators Krebsbach, Lee, Watne

1 A BILL for an Act to amend and reenact section 43-23-12.2 of the North Dakota Century Code,  
2 relating to the duties and liabilities of real estate brokerage firms and clients.

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

4 **SECTION 1. AMENDMENT.** Section 43-23-12.2 of the 1999 Supplement to the North  
5 Dakota Century Code is amended and reenacted as follows:

6 **43-23-12.2. Duties supersede common law.**

- 7 1. The duties of a real estate brokerage firm, and ~~its~~ the firm's licensees, as specified  
8 in this chapter or in rules adopted ~~under~~ to implement this chapter, supersede any  
9 fiduciary duties of that real estate brokerage firm and ~~its~~ the firm's licensees, to a  
10 person based on common-law principles of agency to the extent that those  
11 common-law fiduciary duties are inconsistent with the duties specified in this  
12 chapter or in rules adopted ~~under~~ to implement this chapter.
- 13 2. A client is not liable for a wrongful act, an error, an omission, or a  
14 misrepresentation made by a licensee in connection with the licensee providing  
15 brokerage services for the client, including brokerage services provided under a  
16 subagency relationship, unless the client actually knows ~~or should have known~~ of  
17 the wrongful act, error, omission, or misrepresentation or unless the licensee is  
18 repeating a misrepresentation made by the client. This subsection ~~is intended to~~  
19 ~~supersede~~ supersedes any conflicting common-law duty of the client ~~that is~~  
20 ~~inconsistent with this subsection.~~
- 21 3. A real estate brokerage firm that is providing brokerage services to a client ~~and~~  
22 ~~which, through a subagency relationship, works with another real estate brokerage~~  
23 ~~firm to provide brokerage services to that client~~ is not liable for a wrongful act, an  
24 error, an omission, or a misrepresentation made by the ~~other~~ client, listing agent,

1            or subagent of the real estate brokerage firm, unless the ~~original~~ real estate  
2            brokerage firm ~~actually~~ knew ~~or should have known~~ of the ~~other~~ brokerage firm's  
3            wrongful act, error, omission, or misrepresentation or ~~the other~~ brokerage firm  
4            unless the client, listing agent, or subagent is repeating a misrepresentation made  
5            by the ~~original~~ real estate brokerage firm.

6            4. This section does not limit the liability of a licensee under section 43-23-11.1 ~~or~~ nor  
7            of a client for substantial and willful misrepresentations made in reference to a real  
8            estate transaction. As used in this section, the term "real estate brokerage firm"  
9            includes the firm and brokers and agents who work for the firm.