

**FIRST ENGROSSMENT
with House Amendments**

Fifty-seventh
Legislative Assembly
of North Dakota

ENGROSSED 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 knows or should have known of the
17 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 of

- 1 another real estate brokerage firm, or subagent of another real estate brokerage
2 firm, unless the ~~original~~ real estate brokerage firm knew or should have known of
3 the ~~other brokerage firm's~~ wrongful act, error, omission, or misrepresentation or
4 ~~the other brokerage firm~~ unless the client, listing agent of another real estate
5 brokerage firm, or subagent of another real estate brokerage firm is repeating a
6 misrepresentation made by the ~~original~~ real estate brokerage firm.
- 7 4. This section does not limit the liability of a licensee under section 43-23-11.1 ~~or~~ nor
8 of a client for substantial and willful misrepresentations made in reference to a real
9 estate transaction. As used in this section, the term "real estate brokerage firm"
10 includes the firm and brokers and agents who work for the firm.