

2021 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1258

2021 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Room JW327C, State Capitol

HB 1258
1/19/2021

Real estate commission administration & real estate licensing & real estate broker trust.
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(2:00) Chairman Lefor opens the hearing on HB 1258.

Representatives	Attendance
Chairman Lefor	P
Vice Chairman Keiser	P
Rep Hagert	P
Rep Jim Kasper	A
Rep Scott Louser	P
Rep Nehring	P
Rep O'Brien	P
Rep Ostlie	P
Rep Ruby	P
Rep Schauer	P
Rep Stemen	P
Rep Thomas	P
Rep Adams	P
Rep P Anderson	P

Discussion Topics:

- Rules & regulations of real estate

Rep Louser~District 5: Introduces the bill. Amendment 21.0591.03001. Attachment #1711.

Jeanne Prom~ND Real Estate Commission: # 1235.

Jill Beck~ND Association of REALTORS: # 1354, 1355.

(2:27) Chairman Lefor closes the hearing.

Rep Adams move the Louser's amendment 21.0591.03001.

Rep O'Brien second.

Voice vote~Motion carried.

Rep Adams move a Do Pass as Amended.

Rep Stemen second.

Representatives	Vote
Chairman Lefor	Y
Vice Chairman Keiser	Y
Rep Hagert	Y
Rep Jim Kasper	A
Rep Scott Louser	Y
Rep Nehring	Y
Rep O'Brien	Y
Rep Ostlie	Y
Rep Ruby	Y
Rep Schauer	Y
Rep Stemen	Y
Rep Thomas	Y
Rep Adams	Y
Rep P Anderson	Y

Roll call taken, motion carried ,13-0-1 & Rep Louser is the carrier. (2:29) End time.

Ellen LeTang, Committee Clerk

January 19, 2021

97
1/19/21

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1258

Page 5, line 8, remove "Education"

Page 5, line 8, overstrike "courses may not require passing"

Page 5, line 9, overstrike "of a test to qualify for satisfaction of this requirement."

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1258: Industry, Business and Labor Committee (Rep. Lefor, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1258 was placed on the Sixth order on the calendar.

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Page 5, line 9, overstrike "of a test to qualify for satisfaction of this requirement."

Renumber accordingly

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North Dakota Real Estate Commission
1120 College Dr Ste 204
Bismarck ND 58501
701.328.9737

www.realestatend.org

Testimony in favor of House Bill 1258 with amendment – updates to real estate license law

By Jeanne Prom, Executive Director, jeprom@nd.gov 328.9737
North Dakota Real Estate Commission

House Industry, Business and Labor Committee
Representative Mike Lefor, Chair
2:00 p.m., January 19, 2021

Good afternoon, Chairman Lefor and members of the House Industry, Business and Labor Committee. I am Jeanne Prom, executive director of the North Dakota Real Estate Commission. The Governor-appointed five-member commission serves to protect the public by licensing and setting standards for real estate licensees through NDCC Chapter 43-23, the real estate license law.

The N.D. Real Estate Commission urges a Do Pass recommendation on House Bill 1258 with the amendment proposed by Representative Louser. HB 1258 updates NDCC 43-23, the real estate license law.

Review of NDCC 43-23

Over the past year, the N.D. Real Estate Commission, in their regular open meetings, reviewed NDCC Chapter 43-23 with the N.D. Association of REALTORS® and others. HB 1258 is result of this review.

The commission was very committed to an open, inclusive, and thorough review of the entire license law and its rules in NDCC Chapter 70. The intent of the line-by-line public review was to assure the consumer continues to be protected, which is the commission's legal charge. The intent also was to identify how to modernize and clarify the law by eliminating language no longer needed, and to add language to include, for example, electronic methods of doing business.

The changes are not sweeping changes expanding the authority of the commission or the scope of real estate practice. The changes are updates to existing law and summarized on the next pages.

Members of the North Dakota Real Estate Commission are: Sandra Meyer, Chair; Steven Bitz, Vice Chair; members: Steven Link, Tate Cymbaluk, Scott Breidenbach. Special Assistant Attorney General: Connie Hofland. Staff: Jeanne Prom, executive director.

Summary of proposed changes to NDCC 43-23

Modernization – 12 changes

Removing language no longer necessary – adopting our own seal, requiring commission to meet in their office, outdated education terms, nonresident applicants' state of residence must offer same privileges and licenses to our licensees, referencing the national association code of ethics.

Removing language that does not reflect electronic methods used now – applications must be in writing on forms, licensee list mailed.

Adding or changing language that reflects electronic or other methods used now – licenses can be listed on broker website, shortened timelines as documentation now submitted electronically, licensee list published.

Removing “employ,” “employment,” and “employer” – most licensees are independent contractors.

Removing real estate trust account committee and requirement that trust accounts are interest-bearing – significant amount of earnest money submitted to title companies.

Removing old dates– 8 dates -- effective dates that are in the past.

Clarification – 8 changes

Eliminates duplicative or inexact language – removing duplicative “salesperson” reference in language about firm licensing, added amendment to remove requirement about tests on courses for continuing education.

Adding language -- referencing 43-23-10, non-resident broker's place of business, brokers must notify commission in writing of licensee's termination, earnest money submitted to title company must be tracked, “research and recovery” before “fund.”

Updates language – the prohibited discrimination language changed to match N.D. Human Rights Act, transferred licensed issued to a new broker.

Changes dollar amounts – 2 changes

Changes in compensation language from specific \$50 amount to not to exceed daily legislative rate, upper limit of fines raised from \$2,500 to \$5,000.

Change in deadline – 1 change

Changes from March 1 to January 15 deadline when a late license renewal can be submitted.

Change in subdivided lands act -- 1 change

Change to require that the commission go to the courts if an emergency temporary cease and desist order is needed to stop violations of the subdivided lands act chapter.

Word changes – nearly every page

The Legislative Council added word changes to align with style standards, but the rewording does not otherwise change the law.

The N.D. Real Estate Commission urges a Do Pass recommendation on HB 1258 with the amendment offered by Rep. Louser. Thank you, Chairman Lefor and the House Industry, Business and Labor Committee for your consideration of these updates to NDCC 43-23. Thanks to Rep. Louser, Rep. Adams, and the other co-sponsors for sponsoring this legislation. All co-sponsors also are real estate licensees, former licensees or otherwise associated with the business. The commission also thanks the ND Association of REALTORS® and licensees for their significant work on this review.

The attached table provides specifics on the proposed changes for your reference. I am available for your questions now or at jeprom@nd.gov or 328.9737.

Page	Lines	Proposed amendments to NDCC 43-23 in HB 1258	Purpose	Section
1	20-23	Removing language no longer necessary – adopting our own seal. (Commission uses State Seal.)	modernization	1
2	15-16	Removing language no longer necessary – that commission must meet in its office. (Commission has authority to meet other places.)	modernization	2
2	22-25	Changing dollar amount language – for commission compensation from specific \$50 to language setting upper limit not to exceed daily compensation rate of member of legislative assembly, and is determined by commission at annual budget meeting. (Updates dollar amount language from 1981.)	change in dollar amount	3
3	9	Removing duplicative salesperson language in line 9. (Salesperson language is already in lines 10-11.)	clarification	4
3	27-28	Removing old date – Removes effective date from the past. (Does not change the two-year salesperson experience requirement to apply to be a broker.)	removing old date	5
4	1-2	Removing old date – Removes effective date from the past. (Does not change the requirement for broker applicants to have substantially equivalent experience to two years as a salesperson.)	removing old date	5
5	4-12	Removing language no longer necessary – Removes outdated terms and extra language with “education.” (Education still required, but unnecessary terms and explanations are removed.)	modernization	6
5	8-9	ADDED AMENDMENT – Removing inexact language -- about requirement about testing on continuing education courses. (Continuing education credit can be earned without passing a course test.)	clarification	6
5	27	Removing language that does not reflect electronic methods used now – about applications required to “be in writing upon blanks prepared by the commission.”	modernization	7
6	3-4, 8	Removing language no longer necessary -- about nonresident applicants’ state of residence must offer same privileges and licenses to our licensees. (Commission has authority under NDCC 43-23 to approve nonresident applicants if this is not met.)	modernization	8
8	4-6	Updating language – about prohibited discrimination to match N.D. Human Rights Act.	clarification	9
8	27-28	Removing reference to national association code of ethics. (National association code of ethics was never adopted into NDCC 43-23.)	modernization	9

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Page	Lines	Proposed amendments to NDCC 43-23 in HB 1258	Purpose	Section
10	21-22	Changing dollar amount – upper limit of fines raised from \$2,500 to \$5,000.	change in dollar amount	9
10	31	Adding language referring to 43-23-10, nonresident broker's place of business.	clarification	10
11	1-2, 14, 18, 20-21, 24	Removing "employ," "employment," and "employer" – most licensees are independent contractors.	modernization	10
11	2-3	Adding or changing language that reflects electronic or other methods used now – licenses can be listed on broker website.	modernization	10
11	7, 12	Adding or changing language that reflects electronic or other methods used now – shortened timelines since documentation is now submitted electronically.	modernization	10
11	22	Clarifies that a broker must notify the commission in writing of a licensee's termination.	clarification	10
11	26	Updating by adding language --- to clarify that a transferred license is issued to the new broker.	clarification	10
12	7-8,10	Changing from March 1 to January 15 the deadline when a late license renewal can be submitted – two places in same section.	change in deadline	11
12	22, 27-30	Changing trust accounts from interest-bearing to non-interest bearing – significant amount of earnest money submitted to title companies.	modernization	12
13	13-15	Adding language to require that earnest money deposited directly with the title company and not the broker's trust account needs to be tracked.	clarification	12
13	19, 22-25	Adding and removing language to reflect maintaining a list of licensees online and publishing list.	modernization	13
13	31	Removing old date – Removes effective date from the past.	removing old date	14
14 15	24-31 1-3	Change in subdivided lands act -- to require that the commission go to the courts if an emergency temporary cease and desist order is needed to stop violations of the subdivided lands act chapter. Other changes on page 14, lines 5-8 and 20-22 show language that was moved by Legislative Council but does not change the law.	change in subdivided lands act	15

Page	Lines	Proposed amendments to NDCC 43-23 in HB 1258	Purpose	Section
15	8-14, 18-19	Removing old dates – Removes effective dates from the past.	removing old dates	16
15	16	Adding “research and recover” for clarification.	clarification	16
16	25	Removing old date – Removes effective date from the past.	removing old dates	17
17	3	Removing real estate trust account committee – Removes committee set up to manage interest from trust accounts. Committee not needed as a significant amount of earnest money is submitted to title companies and does not accrue interest, and this bill proposes making trust accounts non-interest bearing.	modernization	18



North Dakota Association of REALTORS®

1354

To advocate for the success of our members in partnership with our local Associations and the National Association of REALTORS®

TESTIMONY IN FAVOR OF HB 1258
January 19, 2020
HOUSE INDUSTRY, BUSINESS AND LABOR

Chairman Lefor and Members of the House Industry, Business and Labor Committee, for the record my name is Jill Beck and I represent the North Dakota Association of REALTORS® (NDAR).

The North Dakota Association of REALTORS® represents more than 2,100 REALTORS® and more than 250 Business Partner members.

NDAR worked closely in reviewing the real estate license law as well as rules and regs of real estate with the North Dakota Real Estate Commission. For clarification the North Dakota Real Estate Commission is the state licensing authority and the North Dakota Association of REALTORS® is the member organization. Those that belong to our organization are bound by a Code of Ethics and can use the term REALTOR® vs. the generic real estate licensee.

While the majority of the bill deals with clean-up and modernization of language that Miss Prom covered, I would like to touch on the last part of the bill that requests repeal of Chapter 43-23.4 REAL ESTATE BROKER TRUST ACCOUNTS. This section was created in 1991 and was modeled after the interest on Lawyers Trust Accounts.

While this falls under license law which is under the jurisdiction of the North Dakota Real Estate Commission, the North Dakota Association of REALTORS was asked to manage the program at the onset. The program requires that the real estate brokers trust accounts be interest bearing (there are room for exemptions) and this money is then used to grant money to 501(c)3 organizations.

In the early years, when interest rates were higher (10+%) the program was earning \$30,000 to \$40,000 a year in interest payments and granting money to tax exempt public organizations of similar amounts. By law the RETA Committee, by grants and appropriations it determines appropriate, shall disburse funds solely for:

- A) Providing housing and shelter to the homeless and poor.
- B) Providing public education relating to needs of housing for the poor
- C) Improving available safe and decent housing

Due to several factors the interest being remitted from brokers trust accounts by banks is now very nominal. The number one factor of course is low interest rates – most banks are at less than 1% with majority half of that or less and also in the last five to ten years more brokers are having the title companies hold their earnest money and there is no interest earned on those accounts.



The following graphics and charts will give some history of RETA program and why we are asking for the repeal of the program. These were reviewed during our discussions on how to move forward with this program.

As you can see from Chart A the proceeds after paying expenses, which include a minimal management fee from the ND REALTORS that doesn't even cover our time and resources, there is very little remaining to pay out in grants.

Chart A:

RETA Profit/Loss			
Year	Income	Expenses	Net Income
2020	\$ 5,833.24	\$ 5,012.01	\$ 821.23
2019	\$ 7,413.26	\$ 5,505.99	\$ 1,907.27
2018	\$ 5,625.23	\$ 5,012.00	\$ 613.23
2017	\$ 2,917.98	\$ 5,030.00	\$ (2,112.02)
2016	\$ 3,441.56	\$ 5,000.00	\$ (1,558.44)
2015	\$ 3,673.23	\$ 5,000.00	\$ (1,326.77)
2014	\$ 5,161.01	\$ 5,006.00	\$ 155.01
2013	\$ 5,346.51	\$ 5,006.00	\$ 340.51
2012	\$ 9,787.87	\$ 5,030.00	\$ 4,757.87
2011	\$ 5,026.60	\$ 5,024.00	\$ 2.60
2010	\$ 5,056.44	\$ 5,030.00	\$ 26.44
2009	\$ 6,541.08	\$ 4,994.43	\$ 1,546.65
2008	\$ 16,090.48	\$ 5,000.00	\$ 11,090.48
2007	\$ 16,642.60	\$ 22,198.49	\$ (5,555.89)
2006	\$ 13,863.95	\$ 7,006.00	\$ 6,857.95

15 years = \$ 17,566.12

Chart B shows the amount of checks we receive and I can attest that we get many that are ten cents or below from banks. Sixty percent of the checks we deposited in 2020 were less than a \$1.00. Remember that most banks have more than one brokers trust account at their institution so these checks are for more than one account and we receive checks as well as bank transfers for less than five cents. By eliminating the program there will be time and cost savings to banks, the management of the program by us as well as the North Dakota Real Estate Commission who

reviews this as part of the audits they do of brokers. As long as there were grants being paid out it overshadowed the work being put into managing the program.

Chart B:

RETA Account Deposits/Checks	
Less than \$1	492
Total	814
	60%
Less than \$2	561
Total	814
	69%
Less than \$5	621
Total	814
	76%
Less than \$10	691
Total	814
	85%

Over the years we have awarded grants in the amount of \$223,285 with the last grant awarded ten years ago in 2010.

43-23.4-05 covers how funds will be distributed upon dissolution of the RETA program. Currently there is approximately \$39,000 of funds in the RETA program.

I ask for your support for HB 1258 and would be happy to answer any questions you may have now or my contact info is below as well.

Jill Beck, CEO
North Dakota Association of REALTORS®
Jill@ndrealtors.com
701-355-1010

salesperson, the license of the broker or salesperson must be automatically suspended upon the effective date of an order by the court as set forth herein authorizing payment from the fund. No such broker or salesperson may be granted reinstatement until having repaid in full, plus interest at the rate of 4% a year, the amount paid from the fund on that person's account. A discharge in bankruptcy does not relieve a person from the penalties and disabilities provided in this chapter.

43-23.2-10. Claims satisfied in order of filing. If, at any time, the money deposited in the fund and allocated for purposes other than real estate education and research is insufficient to satisfy any duly authorized claim or portion thereof, the commission shall, when sufficient money has been deposited in the fund, satisfy such unpaid claims or portions thereof, in the order that such claims or portions thereof were originally filed, plus accumulated interest at the rate of 4% a year.

43-23.2-11. Deposits by commission. Any sums received by the commission pursuant to any provision of this chapter must be deposited in a federally insured depository in this state, and credited to the real estate education, research, and recovery fund, and said sums must be allocated exclusively for the purposes provided in this chapter.

43-23.2-12. Subrogation rights of commission. When, upon the order of the court, the commission has paid from the fund any sum to the judgment creditor, the commission is subrogated to all of the rights of the judgment creditor to the extent of the amount so paid and the judgment creditor shall assign all the judgment creditor's right, title, and interest in the judgment to the extent of the amount so paid to the commission and any amount and interest so recovered by the commission on the judgment must be deposited in the fund.

43-23.2-13. Disciplinary action by commission. Nothing contained in this chapter limits the authority of the commission to take disciplinary action against any licensee under other provisions of chapter 43-23, nor does the repayment in full of all obligations to the fund by any licensee nullify or modify the effect of any other disciplinary proceeding brought pursuant to the provisions of chapter 43-23.

CHAPTER 43-23.4

REAL ESTATE BROKER TRUST ACCOUNTS

Section

43-23.4-01	Real Estate Trust Account Committee
43-23.4-02	Powers and Duties of the Committee
43-23.4-03	Officers
43-23.4-04	Director
43-23.4-05	Disposition of Funds Upon Dissolution
43-23.4-06	Preserving Identity of Funds and Property of a Client

43-23.4-01. Real estate trust account committee. The president of the North Dakota association of realtors, with the approval of the board of directors of the association, shall appoint a 5 member real estate trust account committee. 3 members must be realtors in this state who are members of the association and licensed to practice real estate in this state. The remaining 2 members may not be realtors. The term of office for members is 3 years, except that, as determined by lot, 1 realtor member first appointed shall serve for an initial term of 1 year, and 1 realtor member and 1 nonrealtor member first appointed shall serve an initial term of 2 years. No member may serve more than 2 successive 3-year terms. Each

member shall serve until a successor is appointed. A vacancy on the committee must be filled by appointment of a member to serve for the unexpired portion of the term. Members of the committee serve at the pleasure of the board of directors of the association.

43-23.4-02. Powers and duties of the committee.

1. The real estate trust account committee shall implement and administer an interest on the broker trust account program.
2. The committee is the sole recipient of the interest or dividends paid from real estate interest-bearing trust accounts under the broker trust account program. Upon receipt of the funds, the committee shall make appropriate temporary investments of the funds pending disbursement of the funds.
3. The committee, by grants and appropriations it determines appropriate, shall disburse funds solely for:
 - a. Providing housing and shelter to the homeless and poor.
 - b. Providing public education relating to needs of housing for the poor.
 - c. Improving available safe and decent housing.
4. No funds may be disbursed for any purpose other than tax-exempt public purposes permitted under section 18 of article X of the Constitution of North Dakota, and section 501(c)(3) of the Internal Revenue Code.
5. The real estate trust account committee shall maintain adequate records reflecting all transactions arising with respect to income from and disbursements of the interest on real estate trust accounts.
6. Within 180 days after July 1, 1991, the committee shall adopt rules establishing guidelines and procedures for the operation of an interest on the real estate trust account program, including:
 - a. Guidelines for identifying eligible applicants.
 - b. Procedures for submitting grant applications.
 - c. Guidelines for awarding grant applications.
 - d. Procedures for accounting for the expenditure of grant funds by the recipient.Upon becoming effective, the guidelines and procedures are the basis for the administration of the disbursement of the funds by the committee.
7. Immediately after July 1, 1991, the real estate trust account committee shall take any action necessary to obtain permission from the federal reserve system, federal home loan bank board, and federal deposit insurance corporation to use negotiable order of withdrawal accounts for the deposit of funds of clients or third persons held by a broker in connection with a representation or transaction.
8. The real estate trust account committee shall adopt rules establishing guidelines and procedures that provide for an exemption from interest-bearing trust accounts requirements when the cost of maintaining an interest-bearing trust account exceeds any potential interest earnings.

43-23.4-03. Officers. The president of the board of directors of the North Dakota association of realtors, with the approval of the board, shall appoint a chairman and vice chairman of the real estate trust account committee. The committee may elect other officers as it deems appropriate and may specify their duties.

43-23.4-04. Director. The real estate trust account committee may appoint an executive director of the real estate trust account committee on a full-time or part-time basis at the pleasure of the board. The executive director is entitled to receive compensation set by the committee. The executive director, before entering upon the duties of the office, may be required to provide a surety bond in an amount determined by the committee. The executive director is responsible and accountable to the committee for the proper administration of this

chapter. The executive director may employ persons or expend money for services approved by the committee.

43-23.4-05. Disposition of funds upon dissolution. Upon dissolution of the organization, assets must be distributed for 1 or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or to such entities organized and operated exclusively for charitable, educational, religious, or scientific purposes under section 501(c)(3) of the Internal Revenue Code. Any assets not so disposed of must be disposed of by a court of competent jurisdiction of the county in which the principal office of the organization is located exclusively for charitable, educational, religious, or scientific purposes.

43-23.4-06. Preserving identity of funds and property of a client.

1. All funds of clients paid to a real estate broker, including advances for costs and expenses, must be deposited in 1 or more identifiable interest-bearing trust accounts maintained as required by section 43-23-14.1.
2. Each real estate broker's trust account must be an interest-bearing trust account in a bank, savings bank, trust company, savings and loan association, savings association, credit union, or federally regulated investment company authorized by federal or state law to do business in this state and insured by the federal deposit insurance corporation, the national credit union share insurance fund, or the federal savings and loan insurance corporation, and selected by the broker in the exercise of ordinary prudence unless otherwise agreed upon by the parties to the real estate transaction as provided by rule by the real estate commission. Interest-bearing trust funds must be placed in accounts in which withdrawals or transfers may be made by the depositing broker or realty firm without delay, subject only to any notice period that the depository institution is required to reserve by law or regulation.
3. The broker shall direct the depository institution to:
 - a. Remit interest or dividends, minus any service charges or fees to the brokers or depository institution, on the average monthly balance in the account, or as otherwise computed in accordance with an institution's standard accounting practice, at least quarterly, to the real estate trust account committee;
 - b. Transmit with each remittance to the committee a statement showing the name of the broker or real estate firm for which the remittance is sent, the rate of interest applied, the amount of any service charges deducted, the account balance of the period in which the report is made; and
 - c. Transmit a copy of the statement to the depositing broker.
4. Every licensed real estate broker shall maintain on a current basis, records sufficient to demonstrate compliance with the laws and rules governing the interest-bearing trust account activities.

2021 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1258

2021 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Fort Union Room, State Capitol

HB 1258
3/3/2021

relating to real estate broker trust accounts; and to provide a penalty

Chair Klein opened the hearing at 9:45 a.m. All members present. Senators Klein, Larsen, Burckhard, Vedaa, Kreun, and Marcellais.

Discussion Topics:

- Real estate trust account
- Funds and interest
- Changes in authority of the real estate commission

Representative Louser introduced the bill and testified in favor [9:46].

Jeanne Prom, Executive Director of ND Real Estate Commission testified in favor and submitted testimony #7088 [9:55].

Jill Beck, North Dakota Association of Realtors testified in favor and submitted testimony #7133 [10:13].

Senator Burckhard moved a DO PASS [10:22].

Senator Larsen seconded the motion [10:22].

[10:22]

Senators	Vote
Senator Jerry Klein	Y
Senator Doug Larsen	Y
Senator Randy A. Burckhard	Y
Senator Curt Kreun	Y
Senator Richard Marcellais	Y
Senator Shawn Vedaa	Y

Motion Passed: 6-0-0

Senator Larsen will carry the bill [10:23].

Chair Klein ended the hearing at 10:24 a.m.

Isabella Grotberg, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1258, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1258 was placed on the Fourteenth order on the calendar.



North Dakota Real Estate Commission
1120 College Dr Ste 204
Bismarck ND 58501
701.328.9737

www.realestatend.org

Testimony in favor of Engrossed House Bill 1258 – updates to real estate license law

By Jeanne Prom, Executive Director, jeprom@nd.gov 328.9737
North Dakota Real Estate Commission

Senate Industry, Business and Labor Committee

Senator Jerry Klein, Chair

9:45 a.m., March 3, 2021

Good morning, Chairman Klein and members of the Senate Industry, Business and Labor Committee. I am Jeanne Prom, executive director of the North Dakota Real Estate Commission. The Governor-appointed five-member commission serves to protect the public by licensing and setting standards for real estate licensees through NDCC Chapter 43-23, the real estate license law.

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Updating language – the prohibited discrimination language changed to match N.D. Human Rights Act, transferred license issued to a new broker.

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Changing subdivided lands act -- 1 change

Change to require that the commission go to the courts if an emergency temporary cease and desist order is needed to stop violations of the subdivided lands act chapter.

Changing words – nearly every page

The Legislative Council added word changes to align with style standards, but the rewording does not otherwise change the law.

The N.D. Real Estate Commission urges a Do Pass recommendation on Engrossed HB 1258 as passed by the House 91-0. Thank you, Chairman Klein and members of the Senate Industry, Business and Labor Committee for your consideration of these updates to NDCC 43-23. Thanks to Rep. Louser, Senator Doug Larson, and other co-sponsors for this legislation. All co-sponsors also are real estate licensees, former licensees or otherwise associated with the business. The commission also thanks the ND Association of REALTORS® and licensees for their significant work on this review.

The attached table provides specifics on the proposed changes for your reference. I am available for your questions now or at jeprom@nd.gov or 328.9737.

Page	Lines	Proposed amendments to NDCC 43-23 in HB 1258	Purpose	Section
1	20-23	Removing language no longer necessary – adopting our own seal. (Commission uses State Seal.)	modernizing	1
2	15-16	Removing language no longer necessary – that commission must meet in its office. (Commission has authority to meet other places.)	modernizing	2
2	22-25	Changing dollar amount language – for commission compensation from specific \$50 to language setting upper limit not to exceed daily compensation rate of member of legislative assembly, and is determined by commission at annual budget meeting. (Updates dollar amount language from 1981.)	changing dollar amount	3
3	9	Removing duplicative salesperson language in line 9. (Salesperson language is already in lines 10-11.)	clarifying	4
3	27-28	Removing old date – Removes effective date from the past. (Does not change the two-year salesperson experience requirement to apply to be a broker.)	removing old date	5
4	1-2	Removing old date – Removes effective date from the past. (Does not change the requirement for broker applicants to have substantially equivalent experience to two years as a salesperson.)	removing old date	5
5	4-12	Removing language no longer necessary – Removes outdated terms and extra language with “education.” (Education still required, but unnecessary terms and explanations are removed.)	modernizing	6
5	8-9	Removing inexact language -- about requirement about testing on continuing education courses. (Continuing education credit can be earned without passing a course test.)	clarifying	6
5	27	Removing language that does not reflect electronic methods used now – about applications required to “be in writing upon blanks prepared by the commission.”	modernizing	7
6	3-4, 8	Removing language no longer necessary -- about nonresident applicants’ state of residence must offer same privileges and licenses to our licensees. (Commission has authority under NDCC 43-23 to approve nonresident applicants if this is not met.)	modernizing	8
8	4-6	Updating language – about prohibited discrimination to match N.D. Human Rights Act.	clarifying	9
8	27-28	Removing reference to national association code of ethics. (National association code of ethics is enforced by the association, and was never adopted into NDCC 43-23 as similar standards exist in NDCC 43-23.)	modernizing	9

Members of the North Dakota Real Estate Commission are: Sandra Meyer, Chair; Steven Bitz, Vice Chair; members: Steven Link, Tate Cymbaluk, Scott Breidenbach. Special Assistant Attorney General: Connie Hofland. Staff: Jeanne Prom, executive director.

Page	Lines	Proposed amendments to NDCC 43-23 in HB 1258	Purpose	Section
10	21-22	Changing dollar amount – upper limit of fines raised from \$2,500 to \$5,000.	changing dollar amount	9
10	31	Adding language referring to 43-23-10, nonresident broker's place of business.	clarifying	10
11	1-2, 12, 14, 18, 20-21, 24	Removing "employ," "employment," and "employer" – most licensees are independent contractors. (Also p. 10, line 27, heading.)	modernizing	10
11	2-3	Adding or changing language that reflects electronic or other methods used now – licenses can be listed on broker website.	modernizing	10
11	7, 12, 21, 25	Adding or changing language that reflects electronic or other methods used now – shortened timelines since documentation is now submitted electronically and no license needs to be returned.	modernizing	10
11	22	Clarifies that a broker must notify the commission in writing of a licensee's termination.	clarifying	10
11	26	Updating by adding language --- to clarify that a transferred license is issued to the new broker.	clarifying	10
12	7-8,10	Changing from March 1 to January 15 the deadline when a late license renewal can be submitted – two places in same section.	changing deadline	11
12	22, 27-30	Changing trust accounts from interest-bearing to non-interest bearing – significant amount of earnest money submitted to title companies.	modernizing	12
13	13-15	Adding language to require that earnest money deposited directly with the title company and not the broker's trust account needs to be tracked.	clarifying	12
13	19, 22-25	Adding and removing language to reflect maintaining a list of licensees online and publishing list.	modernizing	13
13	31	Removing old date – Removes effective date from the past.	removing old date	14
14 15	24-31 1-3	Change in subdivided lands act -- to require that the commission go to the courts if an emergency temporary cease and desist order is needed to stop violations of the subdivided lands act chapter. Other changes on page 14, lines 5-8 and 20-22 show language that was moved by Legislative Council but does not change the law.	changing subdivided lands act	15

Page	Lines	Proposed amendments to NDCC 43-23 in HB 1258	Purpose	Section
15	8-14, 18-19	Removing old dates – Removes effective dates from the past.	removing old dates	16
15	16	Adding “education, research and recovery” to clarify.	clarifying	16
16	25	Removing old date – Removes effective date from the past.	removing old dates	17
17	3	Removing real estate trust account committee – Removes committee set up to manage interest from trust accounts. Committee not needed as a significant amount of earnest money is submitted to title companies and does not accrue interest, and this bill proposes making trust accounts non-interest bearing.	modernizing	18



North Dakota Association of REALTORS®

#7133

To advocate for the success of our members in partnership with our local Associations and the National Association of REALTORS®

TESTIMONY IN FAVOR OF HB 1258
March 3, 2021
SENATE INDUSTRY, BUSINESS AND LABOR

Chairman Klein and Members of the Senate Industry, Business and Labor Committee, for the record my name is Jill Beck and I represent the North Dakota Association of REALTORS® (NDAR).

The North Dakota Association of REALTORS® represents more than 2,100 REALTORS® and more than 250 Business Partner members.

NDAR worked closely in reviewing the real estate license law as well as rules and regs of real estate with the North Dakota Real Estate Commission. For clarification the North Dakota Real Estate Commission is the state licensing authority and the North Dakota Association of REALTORS® is the member organization. Those that belong to our organization are bound by a Code of Ethics and can use the term REALTOR® vs. the generic real estate licensee.

While the majority of the bill deals with clean-up and modernization of language that Jeanne covered, I would like to touch on the last part of the bill that requests repeal of Chapter 43-23.4 REAL ESTATE BROKER TRUST ACCOUNTS (or known as RETA). This section was created in 1991 and was modeled after the interest on Lawyers Trust Accounts. I have attached a copy of this for your reference.

While this falls under license law which is under the jurisdiction of the North Dakota Real Estate Commission, the North Dakota Association of REALTORS was asked to manage the program at the onset. The program requires that the real estate brokers trust accounts be interest bearing (there is room for exemptions) and this money is then used to grant money to 501(c)3 organizations.

In the early years, when interest rates were higher (10+%) the program was earning \$30,000 to \$40,000 a year in interest payments and granting money to tax exempt public organizations of similar amounts. By law the RETA Committee, by grants and appropriations it determines appropriate, shall disburse funds solely for:

- A) Providing housing and shelter to the homeless and poor.
- B) Providing public education relating to needs of housing for the poor
- C) Improving available safe and decent housing

Due to several factors the interest being remitted from brokers trust accounts by banks is now very nominal. The number one factor of course is low interest rates – most banks are at less than 1% with majority half of that or less and also in the last five to ten years more brokers are having the title companies hold their earnest money and there is no interest earned on those accounts.



The following graphics and charts will give some history of RETA program and why we are asking for the repeal of the program. These were reviewed during our discussions on how to move forward with this program.

As you can see from Chart A the proceeds after paying expenses, which include a minimal management fee from the ND REALTORS that doesn't even cover our time and resources, there is very little remaining to pay out in grants.

Chart A:

RETA Profit/Loss			
Year	Income	Expenses	Net Income
2020	\$ 5,833.24	\$ 5,012.01	\$ 821.23
2019	\$ 7,413.26	\$ 5,505.99	\$ 1,907.27
2018	\$ 5,625.23	\$ 5,012.00	\$ 613.23
2017	\$ 2,917.98	\$ 5,030.00	\$ (2,112.02)
2016	\$ 3,441.56	\$ 5,000.00	\$ (1,558.44)
2015	\$ 3,673.23	\$ 5,000.00	\$ (1,326.77)
2014	\$ 5,161.01	\$ 5,006.00	\$ 155.01
2013	\$ 5,346.51	\$ 5,006.00	\$ 340.51
2012	\$ 9,787.87	\$ 5,030.00	\$ 4,757.87
2011	\$ 5,026.60	\$ 5,024.00	\$ 2.60
2010	\$ 5,056.44	\$ 5,030.00	\$ 26.44
2009	\$ 6,541.08	\$ 4,994.43	\$ 1,546.65
2008	\$ 16,090.48	\$ 5,000.00	\$ 11,090.48
2007	\$ 16,642.60	\$ 22,198.49	\$ (5,555.89)
2006	\$ 13,863.95	\$ 7,006.00	\$ 6,857.95

15 years = \$ 17,566.12

Chart B shows the amount of checks we receive and I can attest that we get many that are ten cents or below from banks. Sixty percent of the checks we deposited in 2020 were less than a \$1.00. Remember that most banks have more than one brokers trust account at their institution so these checks are for more than one account and we receive checks as well as bank transfers for less than five cents. By eliminating the program there will be time and cost savings to banks, the management of the program by us as well as the North Dakota Real Estate Commission who

reviews this as part of the audits they do of brokers. As long as there were grants being paid out it overshadowed the work being put into managing the program.

Chart B:

RETA Account Deposits/Checks	
Less than \$1	492
Total	814
	60%
Less than \$2	561
Total	814
	69%
Less than \$5	621
Total	814
	76%
Less than \$10	691
Total	814
	85%

Over the years we have awarded grants in the amount of \$223,285 with the last grant awarded ten years ago in 2010.

43-23.4-05 covers how funds will be distributed upon dissolution of the RETA program. Currently there is approximately \$39,000 of funds in the RETA program.

I also want to address that our organization, which is made up of seven local boards around the state are very community oriented and are very involved in charitable organizations and offer much support. When some agencies are feeling a need they often times turn to the REALTOR® organization as they know we can react quickly and get their needs met.

I ask for your support for HB 1258 and would be happy to answer any questions you may have now or my contact info is below as well.

Jill Beck, CEO

North Dakota Association of REALTORS®

Jill@ndrealtors.com

701-355-1010

salesperson, the license of the broker or salesperson must be automatically suspended upon the effective date of an order by the court as set forth herein authorizing payment from the fund. No such broker or salesperson may be granted reinstatement until having repaid in full, plus interest at the rate of 4% a year, the amount paid from the fund on that person's account. A discharge in bankruptcy does not relieve a person from the penalties and disabilities provided in this chapter.

43-23.2-10. Claims satisfied in order of filing. If, at any time, the money deposited in the fund and allocated for purposes other than real estate education and research is insufficient to satisfy any duly authorized claim or portion thereof, the commission shall, when sufficient money has been deposited in the fund, satisfy such unpaid claims or portions thereof, in the order that such claims or portions thereof were originally filed, plus accumulated interest at the rate of 4% a year.

43-23.2-11. Deposits by commission. Any sums received by the commission pursuant to any provision of this chapter must be deposited in a federally insured depository in this state, and credited to the real estate education, research, and recovery fund, and said sums must be allocated exclusively for the purposes provided in this chapter.

43-23.2-12. Subrogation rights of commission. When, upon the order of the court, the commission has paid from the fund any sum to the judgment creditor, the commission is subrogated to all of the rights of the judgment creditor to the extent of the amount so paid and the judgment creditor shall assign all the judgment creditor's right, title, and interest in the judgment to the extent of the amount so paid to the commission and any amount and interest so recovered by the commission on the judgment must be deposited in the fund.

43-23.2-13. Disciplinary action by commission. Nothing contained in this chapter limits the authority of the commission to take disciplinary action against any licensee under other provisions of chapter 43-23, nor does the repayment in full of all obligations to the fund by any licensee nullify or modify the effect of any other disciplinary proceeding brought pursuant to the provisions of chapter 43-23.

CHAPTER 43-23.4

REAL ESTATE BROKER TRUST ACCOUNTS

Section

43-23.4-01	Real Estate Trust Account Committee
43-23.4-02	Powers and Duties of the Committee
43-23.4-03	Officers
43-23.4-04	Director
43-23.4-05	Disposition of Funds Upon Dissolution
43-23.4-06	Preserving Identity of Funds and Property of a Client

43-23.4-01. Real estate trust account committee. The president of the North Dakota association of realtors, with the approval of the board of directors of the association, shall appoint a 5 member real estate trust account committee. 3 members must be realtors in this state who are members of the association and licensed to practice real estate in this state. The remaining 2 members may not be realtors. The term of office for members is 3 years, except that, as determined by lot, 1 realtor member first appointed shall serve for an initial term of 1 year, and 1 realtor member and 1 nonrealtor member first appointed shall serve an initial term of 2 years. No member may serve more than 2 successive 3-year terms. Each

member shall serve until a successor is appointed. A vacancy on the committee must be filled by appointment of a member to serve for the unexpired portion of the term. Members of the committee serve at the pleasure of the board of directors of the association.

43-23.4-02. Powers and duties of the committee.

1. The real estate trust account committee shall implement and administer an interest on the broker trust account program.
2. The committee is the sole recipient of the interest or dividends paid from real estate interest-bearing trust accounts under the broker trust account program. Upon receipt of the funds, the committee shall make appropriate temporary investments of the funds pending disbursement of the funds.
3. The committee, by grants and appropriations it determines appropriate, shall disburse funds solely for:
 - a. Providing housing and shelter to the homeless and poor.
 - b. Providing public education relating to needs of housing for the poor.
 - c. Improving available safe and decent housing.
4. No funds may be disbursed for any purpose other than tax-exempt public purposes permitted under section 18 of article X of the Constitution of North Dakota, and section 501(c)(3) of the Internal Revenue Code.
5. The real estate trust account committee shall maintain adequate records reflecting all transactions arising with respect to income from and disbursements of the interest on real estate trust accounts.
6. Within 180 days after July 1, 1991, the committee shall adopt rules establishing guidelines and procedures for the operation of an interest on the real estate trust account program, including:
 - a. Guidelines for identifying eligible applicants.
 - b. Procedures for submitting grant applications.
 - c. Guidelines for awarding grant applications.
 - d. Procedures for accounting for the expenditure of grant funds by the recipient.Upon becoming effective, the guidelines and procedures are the basis for the administration of the disbursement of the funds by the committee.
7. Immediately after July 1, 1991, the real estate trust account committee shall take any action necessary to obtain permission from the federal reserve system, federal home loan bank board, and federal deposit insurance corporation to use negotiable order of withdrawal accounts for the deposit of funds of clients or third persons held by a broker in connection with a representation or transaction.
8. The real estate trust account committee shall adopt rules establishing guidelines and procedures that provide for an exemption from interest-bearing trust accounts requirements when the cost of maintaining an interest-bearing trust account exceeds any potential interest earnings.

43-23.4-03. Officers. The president of the board of directors of the North Dakota association of realtors, with the approval of the board, shall appoint a chairman and vice chairman of the real estate trust account committee. The committee may elect other officers as it deems appropriate and may specify their duties.

43-23.4-04. Director. The real estate trust account committee may appoint an executive director of the real estate trust account committee on a full-time or part-time basis at the pleasure of the board. The executive director is entitled to receive compensation set by the committee. The executive director, before entering upon the duties of the office, may be required to provide a surety bond in an amount determined by the committee. The executive director is responsible and accountable to the committee for the proper administration of this

chapter. The executive director may employ persons or expend money for services approved by the committee.

43-23.4-05. Disposition of funds upon dissolution. Upon dissolution of the organization, assets must be distributed for 1 or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or to such entities organized and operated exclusively for charitable, educational, religious, or scientific purposes under section 501(c)(3) of the Internal Revenue Code. Any assets not so disposed of must be disposed of by a court of competent jurisdiction of the county in which the principal office of the organization is located exclusively for charitable, educational, religious, or scientific purposes.

43-23.4-06. Preserving identity of funds and property of a client.

1. All funds of clients paid to a real estate broker, including advances for costs and expenses, must be deposited in 1 or more identifiable interest-bearing trust accounts maintained as required by section 43-23-14.1.
2. Each real estate broker's trust account must be an interest-bearing trust account in a bank, savings bank, trust company, savings and loan association, savings association, credit union, or federally regulated investment company authorized by federal or state law to do business in this state and insured by the federal deposit insurance corporation, the national credit union share insurance fund, or the federal savings and loan insurance corporation, and selected by the broker in the exercise of ordinary prudence unless otherwise agreed upon by the parties to the real estate transaction as provided by rule by the real estate commission. Interest-bearing trust funds must be placed in accounts in which withdrawals or transfers may be made by the depositing broker or realty firm without delay, subject only to any notice period that the depository institution is required to reserve by law or regulation.
3. The broker shall direct the depository institution to:
 - a. Remit interest or dividends, minus any service charges or fees to the brokers or depository institution, on the average monthly balance in the account, or as otherwise computed in accordance with an institution's standard accounting practice, at least quarterly, to the real estate trust account committee;
 - b. Transmit with each remittance to the committee a statement showing the name of the broker or real estate firm for which the remittance is sent, the rate of interest applied, the amount of any service charges deducted, the account balance of the period in which the report is made; and
 - c. Transmit a copy of the statement to the depositing broker.
4. Every licensed real estate broker shall maintain on a current basis, records sufficient to demonstrate compliance with the laws and rules governing the interest-bearing trust account activities.