



# North Dakota Association of REALTORS®

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2023

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March 9, 2023

«FirstName» «LastName»,

Congratulations on becoming a member of the North Dakota Association of REALTORS® (NDAR) and the National Association of REALTORS® (NAR) and joining our REALTOR® family!

REALTORS® are *champions of homeownership*, property rights and their communities. The REALTOR® Code of Ethics is the cornerstone of National Association of REALTORS® membership. Ethics training for REALTORS® ensures responsible and accountable dealings with the public and with the real estate community while demonstrating commitment to education and professionalism.

A successful REALTOR® is honest; avoids conflicts of interest; provides full disclosure as appropriate; keeps his/her clients informed; safeguards client funds; clarifies contract details; treats all clients and customers with respect; strives to be competent and knowledgeable and asks for help when unsure; makes only truthful representations about him/herself and other real estate professionals, and respects the exclusive brokerage relationship agreements other REALTORS® have with their clients.

As a member, visit the NDAR website at [www.ndrealtors.com](http://www.ndrealtors.com) or NAR's website at [www.nar.realtor](http://www.nar.realtor) for your member benefits. You will be amazed at the benefits that are offered! Also, make sure you explore how to become involved in your local and state associations. If you have any questions or want more information on how to get involved in the associations, President Kevin would be happy to visit with you. Feel free to call, text, or email him.

We encourage you to continue your education by working on designations and certifications. Check out [www.C2EX.realtor](http://www.C2EX.realtor) to increase your professionalism, knowledge and earn your first certification. NAR is also offering a new educational opportunity in FairHaven: A Fair Housing Simulation. An innovative online simulation training, where agents work against the clock to sell homes in the fictional town of Fairhaven, while confronting discrimination in the homebuying process. <https://fairhaven.realtor/> There will be many opportunities to get great education through NDAR that will help you achieve relevancy in your profession.

We wish you luck as a REALTOR® and thank you for becoming a member of the North Dakota Association of REALTORS®.

*Kevin Fisher*

Kevin Fisher  
2023 NDAR President

*Jill Beck*

Jill Beck  
NDAR CEO



**Vision:** NDAR is the trusted voice of real estate and the advocate for a better real estate future.

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



### PRESIDENT

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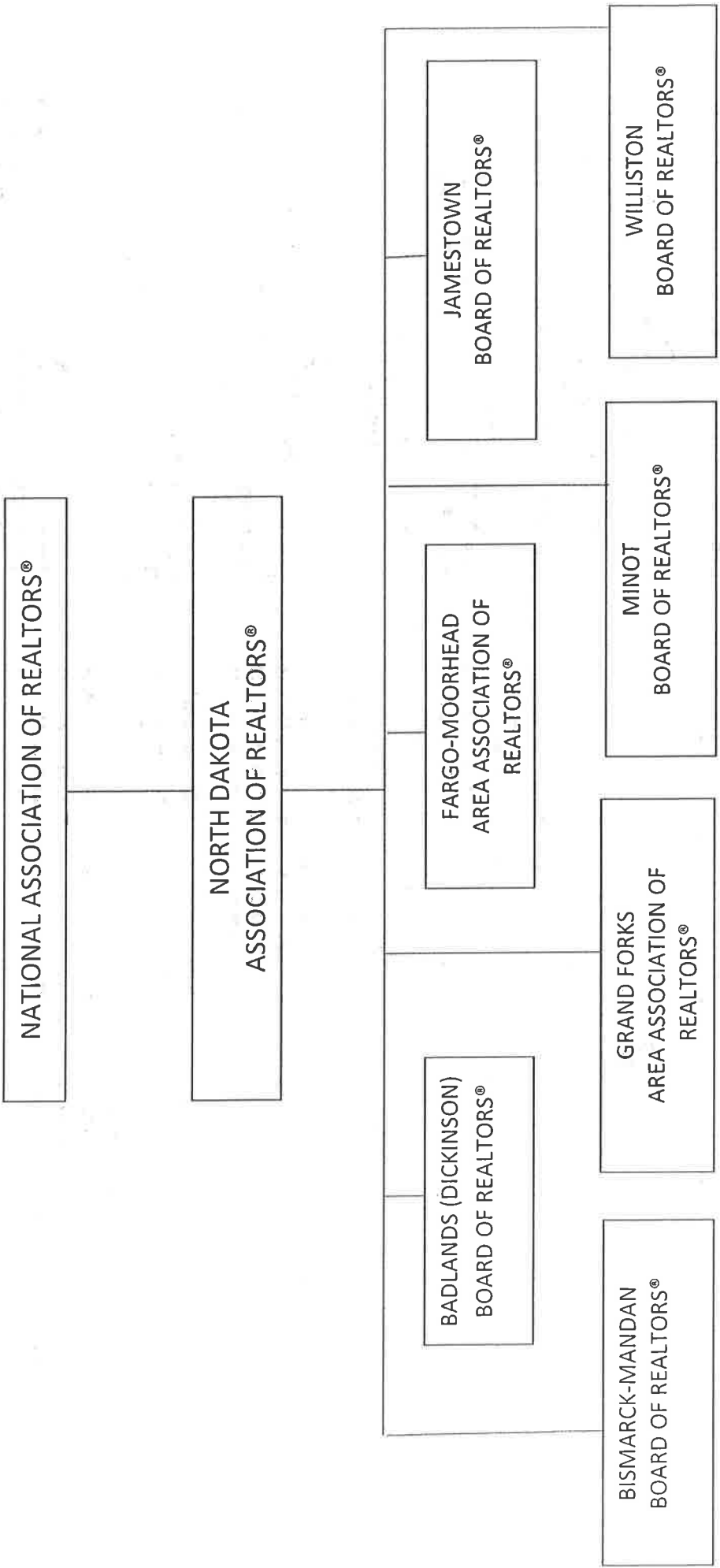
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# Calendar of Events

General  Blue

## 2023

Feb 23	TrustFunds Webinar,	2 Webinars
Mar 16	NDREC Mtg.,	Bismarck, ND
Mar 17-20	AE Institute,	Seattle, WA
May 5	Region 8 Cmte. Members,	Zoom Call
May 6-11	REALTORS® Legislative Mtgs.,	Washington, DC
June 8	NDREC Mtg.,	Bismarck, ND
June 13-14	NDAR BOD & Cmte. Meetings,	Bismarck, ND
June 21-22	State AE Mtg.,	TBD
July 12-13	Region 8 Meetings,	Sioux Falls, SD
July 28	Region 8 Cmte. Members,	Zoom Call
Aug 14-15	Leadership Summit,	Chicago, IL
Aug 15	NDAR Emeritus Application Deadline	NDAR
Sept 12-15	REALTOR® Convention of the Dakotas,	Sioux Falls, SD
Sept 23	TrustFunds Webinar,	2 Webinars
October 27	Region 8 Cmte. Members,	Zoom Call
Nov 12-17	NAR Convention,	Anaheim, CA
Dec 1	ND Ring Day	Statewide

January						
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31						

### NAR Board of Dir. – Town Hall Mtgs.

April – Date Pending  
 July 26 (11am Central)  
 September/October – Date Pending  
 November 1 – Time TBD  
 All Zoom Mtgs.

### RPAC Deadlines!

For May Meetings – April 11  
 For November Meetings – October 17  
 End of Year Deadline – December 6

**NORTH DAKOTA  
REAL ESTATE**  
Benefits Center

Presented by

**NDAR**  
North Dakota Association of REALTORS®

## **Affordable, quality, health solutions for ND REALTORS®**



There is now an alternative to the ACA exchange and private insurance for our members. Through the North Dakota Real Estate Health Benefits Center, your independent business may qualify for quality, affordable coverage that works with your lifestyle, gives you and your dependents the best care possible, and fits with your financial picture.

Learn More at

**NDREHealthBenefits.com**

Powered by **decisely**

NPN: #8938171



## You've got questions, we've got answers.

★ **How are you able to offer such great pricing on these plan designs?**

North Dakota Association of REALTORS® Health Benefits Center harnesses the scale of every North Dakota REALTOR® to provide greater health spending control for members and their families in good health.

★ **Who qualifies?**

Business owners, Sole proprietors and independent contractors in good health may establish a self-funded plan for their business, covering themselves and their dependents, and join a captive to more effectively manage their health expenses and benefit from the larger group.

*Please Note: To be eligible for this program you must have a legal business entity in the form of a Tax ID.*

★ **Is preventive care covered?**

Similar to ACA plans, qualified preventive services are not subject to the deductible, and are covered 100% by the program.

★ **How is this plan different from traditional insurance plans?**

NDAR is sponsoring a captive insurance program. As a participating member you have ownership in the program. Members self-fund their healthcare costs up to a pre-established level. If claims are low the savings go toward the captive, allowing participants to benefit in the form of savings the following year. If claims are high, the program is protected by stop-loss insurance. Stop-loss insurance caps your maximum exposure. Part of your monthly payment includes stop-loss insurance.

★ **What does my payment include?**

Each month you make a payment that covers the fixed costs of your plan: The monthly plan payment, stop-loss insurance, technology, and administration. This monthly payment is fixed for the full year.

Learn More at

**NDREHealthBenefits.com**

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NPN: #8938171

## Facts About the North Dakota Legislative Branch

To serve in the North Dakota Legislative Assembly a person must be:

- At least 18 years of age as of the election date.
- A qualified elector of the legislative district.
- A resident of North Dakota for one year before the election.

The first female legislators (Minnie Craig and Nellie Dougherty) were elected in 1922.

Brynhild Haugland was the longest-serving legislator in North Dakota. She served for 52 years.

There are 47 districts each represented by 2 representatives and 1 senator.

## Other Fun Facts About North Dakota

North Dakota is named after the Dakota Sioux Tribe. Dakota is the Sioux word for "friends".

North Dakota was the 34th state admitted into the Union on November 2, 1889.

There are 86,842 miles of roadway.

There are 51,373 miles of rivers.

Record low temperature is -60° F (-51.1° C)  
(Recorded in Parshall February 15, 1936)

Record high temperature is 121° F (49° C)  
(Recorded in Steele July 6, 1936)

North Dakota is the 19th largest state by area in the United States (70,762 square miles).

The town of Rugby is considered to be the geographic center of the North American continent.



# A GUIDE TO LAWMAKING IN NORTH DAKOTA



NORTH DAKOTA LEGISLATIVE COUNCIL  
STATE CAPITOL  
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701.328.2916

[WWW.LEGIS.ND.GOV](http://WWW.LEGIS.ND.GOV)

PROVIDED BY THE  
NORTH DAKOTA LEGISLATIVE COUNCIL



# How a Bill Becomes Law

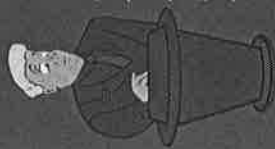
## Bill Preparation

Bills are usually prepared by the Legislative Council for introduction by a legislator. If a bill is not prepared by the Legislative Council, the bill must be reviewed by the Legislative Council office for proper form and style.



## Bill Introduction

After the preliminary business of opening a session, the presiding officer (the Lieutenant Governor in the Senate and the Speaker in the House) calls for an introduction of bills. Any legislator may hand the bill to the bill clerk.



## Bill Number Assignment

The bill clerk assigns a number to the bill and the Chief Clerk of the House or the Secretary of the Senate reads the bill by title only (first reading of the bill - 9th Order of Business).



## Committee Assignment & Introduction

The presiding officer refers the bill to the proper committee. In committee, the bill is explained and discussed.



## Public Input

Public hearings are held on every bill.



## Committee Recommendation & Report

The full committee may:

- Report the bill unfavorably with or without amendment;
- Report the bill favorably with or without amendment;
- Report the bill without any recommendation and with or without amendment; or
- Request the bill's referral to another committee with or without any amendment.

Each committee reports to the House or Senate on the bills that have been referred to the committee.



## Calendar Placement & Consideration of Amendment

All bills, regardless of type of committee report, will be placed on the calendar for final passage. If the committee recommends an amendment, the amendment is placed on the calendar and adopted or rejected before the bill is placed on the calendar.



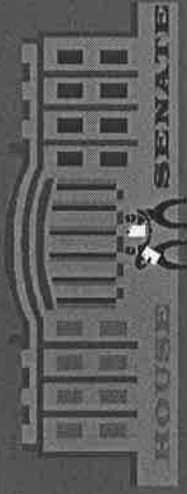
## Floor Debate

When a bill comes up on the calendar, the bill is read again. This is known as the second reading and is the time when the bill can be finally passed or defeated. Then the bill is debated on the floor of the House or Senate.



## Second House Consideration

If the second house passes the bill in the same form, the bill is enrolled, signed by presiding officers, and sent to the Governor. If the second house amends and then passes the bill, it is sent back to the first house for concurrence. If the first house does not concur, the presiding officers of both houses appoint a conference committee.



## Conference Committee

The conference committee makes recommendations to both houses and both houses must approve the bill in the same form.



## Enrollment

The bill then is enrolled, signed by the presiding officers, and sent to the Governor. If signed or if forwarded to the Secretary of State without being signed, the bill becomes law (usually August 1, or July 1 for appropriations and revenue measures).



## Veto Override

If vetoed, the bill can still become a law by a 2/3 vote in both houses.



## Voters' Referral

A bill, once passed, may be repealed, whole or in part, through a vote of the electorate—a referendum.



## Initiated Measure

A law also may be proposed and acted upon by the electorate by means of an initiated measure.



# the REALTOR® Report



News for you from the ND Association of REALTORS®  
March 16, 2022

**2022 REALTOR® Convention of the Dakotas – Registration & Info Will be Available March 22!**  
SEPTEMBER 12-14, 2022



REALTOR® CONVENTION OF THE DAKOTAS  
RAMKOTA HOTEL & CONFERENCE CENTER - 400 3RD ST.  
BISMARCK ND | WWW.RAMKOTABISMARCK.COM

*Registration & all information for the 2022 REALTOR® Convention of the Dakotas will be available on March 22<sup>nd</sup>! Including the registration website! The convention this year is in beautiful Bismarck ND on September 12-14 & will mark the historic 50 years of joint conventions between NDAR & South Dakota REALTORS®.*

## **NDAA Spring Appraisal Seminar**



The NDAA Board of Directors is excited to offer the association's 2022 Spring Education Offering on April 1, 2022 at the First International Bank and Trust conference room in Bismarck, ND. See the flyer [HERE](#) for details on the seminar and registration information. **Space is limited!**

**Valuation by Comparison: Residential Analysis and Logic** (Appraisal Institute Seminar) presented by Mark V. Smeltzer, MAI, SRA, AI-RRS from Pittsburgh, PA.

Location: **First International Bank and Trust, 1601 N 12<sup>th</sup> Street, Bismarck, ND**

Rooms are available at the Radisson located at 605 E Broadway Ave. Room Rates: **\$99 per night** ask for the **NDAA Room Block** you may call 701-712-6475 to reserve your room.

To Register for the Seminar (\$150): <https://bit.ly/35J2Fd5>

Required Textbook (\$50): <https://bit.ly/3429aXt>

## NAR 2023 Committee Application Process Open Until May 13<sup>th</sup>

It is that time of year again!

NAR's 2023 Committee Application Process is **open now through May 13**. We are excited to get passionate members to serve on the national committees. Please help us reach them by sharing this information with your members. For your use, I have attached various marketing assets. If you need any assistance with brainstorming ways to share this information, please don't hesitate to reach out to me. I am happy to be a resource to you!

Once the application window closes, **State Association Executives will have from May 16 – May 27** to review applications, submit state representative recommendations, and rank committee applications for members within your state.

Here's a quick breakdown of important pieces of the 2023 process:

- [Appointment Timeline](#)
- [FAQs](#)
- [Committee Composition & Structure](#)
- [Appointment Policies](#)

## REALTOR® Broker Summit – Phoenix, AZ | April 5-6



Join NAR in Phoenix, AZ, on April 5-6 for the return of 2022 REALTOR® Broker Summit, NAR's most exciting and exclusive broker event!

The REALTOR® Broker Summit offers an incredible two days of learning, exclusive insights, and in-person networking. Connect with industry experts, discover technologies, and obtain strategies to take home to your clients, agents, and business.

Invest in your business with great general sessions such as: **NAR Legal Update & Risk Management, Value Propositions and Agent Motivation, Marketing & Branding Strategies, Next Generation social media, Technology, and much more!** Network with fellow brokers and bring your learnings home to benefit your agents, clients, and business.

Registration includes opening day networking lunch, cocktail reception, and breakfast on day two!

**REALTOR® Broker Summit registration for NAR members is \$349.00. Secure your seat today!**

Visit the official [REALTOR® Broker Summit site](#) to register or to learn more.



### NAR's Center for Financial Wellness – Webinar March 23<sup>rd</sup>

NAR's Center for Financial Wellness will be hosting an upcoming webinar: The Wealthy Woman: Infinite Banking Strategies for REALTORS® on Wednesday, March 23, 1-2 p.m. CT featuring Presenter: Rachel Marshall.

Today, about half of women out-earn their husbands and partners. As women's incomes rise, so does the need to take an active role in managing household finances to meet your current and future needs. During this workshop, Rachel will show you the "seven generation" mindset to make the best financial decisions, walk you through a system for managing money that makes you feel wealthy, and demonstrate the power of life insurance as a warehouse of wealth.

Learn more and register today! [Registration & Info](#)

### High Plains Fair Housing Center – Free Webinars



High Plains FHC is continuously adding new events and registration is open. You can register for many of our FREE webinars now!

- 2/24/2022 Fair Housing Webinar for Landlords and Property Managers
- 3/15/2022 Disability Protections in Housing - Your Fair Housing Rights
- 3/24/2022 Fair Housing Design and Construction Requirements
- 3/30/2022 Fair Housing in Lending and Sales
- 4/19/2022 Disability Protections in Housing - Your Fair Housing Rights

You can register for any or all of our webinars online [HERE](#)

### ND REALTORS® Health Benefits Center



The ND REALTORS® Health Benefits Center is the *only* health benefits solution endorsed by ND REALTORS®, providing independent contractors and sole business owners an opportunity to take control of and save on healthcare expenses for themselves and their dependents. It will be worth checking to see if you can save versus traditional ACA Exchange or private insurance market plans.

[Click here to visit the official ND REALTORS® Health Benefits Center website](#), and get started today. This will bring you to a page that has a quick, easy process to learn more and get a quote.

To apply and ultimately establish your plan, you must be an Independent Contractor, Business Owner, or Sole Proprietor with a federal Tax ID (easy to register for one through the IRS website); complete a short health questionnaire and be accepted; and be an active member of ND

REALTORS® (please note that you must have a RE license). A federal tax ID can be from an LLC, S-corp, or other sole prop structure. You can see your rates instantly and qualifying is a quick process.

## Registration Opens Feb. 16<sup>th</sup> – 2022 REALTORS® Legislative Meetings



**NAR Member:** FREE

**Non-Member:** \$125 for full conference, \$40 expo only

**Guest:** FREE, only when registered with a NAR Member

The REALTORS® Legislative Meetings is where NAR members take an active role to advance the real estate industry, public policy and the association. REALTORS® come to the Washington, DC area for Capitol Hill visits, special issues forums, committee meetings, legislative activities and the industry trade show. This year's Legislative Meetings take place **May 1-6, 2022**, and the REALTORS® Trade Expo takes place May 3-4, 2022. The event is held annually near Washington, DC each May.

**Location:** Gaylord National Resort & Convention Center, 201 Waterfront Street, National Harbor USA, Maryland 20745

[Registration Info](#)

## Good News for Real Estate – Breaking News

President Biden signed a long-awaited spending deal into law Tuesday afternoon at a White House ceremony attended by Vice President Kamala Harris and dozens of members of Congress.

The \$1.5 trillion bipartisan bill funds the government through the fiscal year ending Sept. 30 and contains many NAR advocacy priorities, including flood insurance, affordable housing, and transportation.

“This bill is significant for President Biden because the U.S. has been operating under continuing resolutions that funded the government based on spending levels set by the previous administration and Congress,” says Shannon McGahn, chief advocacy officer for NAR. “It is the president’s first big spending deal that will guide his priorities in the coming years.”

“Annual spending bills are the bread and butter of our advocacy operation,” McGahn continues. “This measure contains all 12 appropriations bills that fund the government rolled into one package. We work throughout the year to ensure provisions important to the housing sector get the attention they deserve during this process.”

NAR’s policy team analyzed the 2,700-page bill, [offering a summary of provisions critical to the real estate sector](#), which supports nearly 20% of the entire economy. Highlights:

- **Flood insurance:** Extends the NFIP through Sept. 30 and provides significant funding for communities to respond to and mitigate the impacts of future disasters, with \$276 million for flood mapping.
- **Broadband:** Includes more than \$550 million to expand rural broadband services on top of broadband funding included in the American Rescue Plan and bipartisan infrastructure bill last year.

- **Fair housing:** Contains \$85 million for fair housing activities, including the Department of Housing and Urban Development's Fair Housing Initiatives Program, Fair Housing Assistance Program, and the National Fair Housing Training Academy. This level represents an increase of \$12.5 million above the FY 2021 enacted level.
- **Violence Against Women Act:** Reauthorizes this legislation and establishes the Violence Prevention Office at HUD. NAR was part of the original group of housing industry supporters that helped craft the housing provisions of the bill.
- **Transportation & Infrastructure:** Provides the remaining funding to implement programs and spending in the Bipartisan Infrastructure Framework, which was passed in November. Provides more than \$10 billion to upgrade the nation's water infrastructure.

Among other things, the package also revives the EB-5 Visa Regional Center Program, increases funding to combat money laundering, and supports Small Business Administration efforts to help underserved entrepreneurs.

[Read NAR's full analysis of provisions important to real estate.](#)



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Your personal tech support team

**(866) 432-3029**

M-F: 8 a.m.- 7 p.m.

Sat.: 8 a.m.- 4 p.m.

[www.techhelpline.com](http://www.techhelpline.com)

**NDAR**  
North Dakota Association of REALTORS®

# How Can Tech Helpline Assist You?

## Included Services

- Instruction for installing and configuring new hardware and software
- Diagnosis and repair of computer hardware and software issues
- Advice for purchasing hardware, software and services
- Basic instruction with major software applications
- Recommendations for upgrades and updates
- Advice for performance optimization
- Troubleshooting network issues

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- Microsoft Windows 10®
- Microsoft Windows Vista®
- Microsoft Windows 7®
- Microsoft Windows 8®
- Mac OS X (10.3 and higher)
- Upgrades from all versions of Microsoft Windows 2000®

### Hardware:

- Smart Phones: iPhones, Android, Windows 8, Blackberry
- Tablets: iOS, Android, Windows 8, Blackberry
- Digital Cameras
- CD/DVD Drives
- Laptops
- Monitors
- Network Adaptors
- PC Cards / PCMCIA
- PDAs
- Printers: USB, WIFI
- Scanners
- Sound Cards
- Storage Media
- USB Devices
- Video Cards

### Browsers/Net:

- WiFi Set Up
- Internet Service Providers
- Microsoft® Internet Explorer
- Mozilla Firefox
- Google Chrome
- Opera
- Safari
- Networking
- Work Groups
- Share Files
- Share Printer

### Software Applications:

#### E-mail

- Entourage
- MS Outlook
- MS Outlook Express
- Webmail
- Windows Mail

#### Real Estate Specific

- Form Simplicity
- The Living Network

#### Office/Financial

- Adaptec Toast
- Adaptec EXCD Creator
- Adobe Acrobat
- Corel Office Products: WordPerfect, Quattro Pro Presentations, Visual Intelligence
- Corel Draw
- Intuit Quicken
- Intuit Quickbooks
- Microsoft® Media Player
- Microsoft® Money
- Microsoft® Office Products: Word, Excel, PowerPoint, Access
- Microsoft® Outlook Express (Versions 5.0 and higher)
- Microsoft® Outlook (Versions 5.0 and higher)
- Microsoft® Publisher (Versions 2000 and higher)
- Microsoft® Visio (Versions 2000 and higher)
- Microsoft® Works
- Nero Burning ROM
- Roxio CD-Burning Products
- Winzip Applications
- iTunes

### All PC compatible, Macintosh and clones such as:

- Acer
- AST
- Clones / Whitebox
- Compaq
- Dell
- eMachines
- Epson
- Fujitsu
- Gateway
- Hewlett Packard
- IBM
- Lenovo
- Mac
- Sony
- Toshiba
- Winbook and others

### Firewall/Intrusion Applications:

- Virus Removal
- AVG AntiVirus
- Lavasoft Ad-Aware
- McAfee AntiVirus
- Norton AntiVirus
- Spyware/Adware Intrusion Products
- Symantec pcAnywhere
- Tend Micro
- ZoneAlarm and others





**Public  
Policy  
Statement**

North Dakota Association of REALTORS®  
1616 Capitol Ave  
Bismarck, ND 58501  
[info@ndrealtors.com](mailto:info@ndrealtors.com)  
[www.ndrealtors.com](http://www.ndrealtors.com)





## **VISION**

**The North Dakota Association of  
REALTORS®**

**is the trusted voice of real estate and  
the advocate for a better real estate future.**

## **MISSION**

**The North Dakota Association of  
REALTORS®**

**advocates for the success of our members  
in partnership with our local associations  
and the National Association of REALTORS®**

**NORTH DAKOTA ASSOCIATION OF  
REALTORS®  
PUBLIC POLICY STATEMENT – 2019/2021**

The social and economic fabric of our nation, and our state, is deeply rooted in the fundamental right of all people to own, use, and transfer real property. Real property ownership has been and continues to be one of the highest personal priorities of most Americans. Real property is defined as land and anything permanently affixed to the land together with all rights exercisable in connection with such land and fixtures.

Real property ownership inspires a deep sense of personal pride and accomplishment and fosters greater interest and involvement in community affairs. Real property ownership encourages savings and investment and contributes to economic stability and self-sufficiency.

The ND ASSOCIATION OF REALTORS® is committed to the protection and preservation of the constitutional right of every individual to acquire, occupy, use and dispose of real property as he or she chooses within the law. We oppose all laws, rules, and regulations that impose unreasonable restraints and limitations on the private ownership, use, and transfer of real property. This includes inequitable and counterproductive property and real estate-related taxes.

We are further committed to the protection and preservation of the free enterprise system. We oppose undue government intervention in the affairs of private businesses and look unfavorably upon government guidelines, rules, regulations, and procedures that unnecessarily burden the business community and add to the costs of doing business.

## **1. PROPERTY AFFORDABILITY**

1.1 The ND ASSOCIATION OF REALTORS® believes that every individual should have the opportunity to live in safe and decent housing which our North Dakota families and individuals can afford. We urge all levels of government to adopt and integrate housing policies that are responsive to the individual and collective housing needs of our society.

1.2 The Association believes that North Dakota housing needs and objectives are best served in an economically healthy private market. We support legislative measures and initiatives that serve to increase the availability and affordability of housing through the private sector. We favor government intervention and public assistance only when housing needs cannot be fully or effectively met by the private sector.

1.3 The Association favors joint public and private sector housing initiatives that encourage

homeownership by individuals and families at all income levels.

1.4 The Association strongly supports the existence of a North Dakota State Housing Finance agency to advocate and administer state housing policies and programs.

1.5 The Association believes that rental housing needs are best met through private investment. We encourage and support measures that accomplish this objective.

1.6 The Association believes that real estate investment, development, and revitalization contribute to a sound economic base and an adequate supply of housing which all ND citizens can afford. We oppose state and local policies and regulations that limit or effectively prevent innovation and development that serve to meet housing needs and changing market demands.

1.7 The Association believes that local planning and zoning policies should allow for development of adequate housing which all families and individuals can afford. We support laws and policies which:

- zone adequate land for all types of housing
- allow growth in residential, commercial and industrial development



- streamline the permit and approval process and eliminate unnecessary and costly time delays
- encourage innovations in development and construction techniques and materials
- encourage innovative product design to meet affordable housing needs

1.8 The Association opposes adoption of laws and policies that allow public or private impact or transfer fees on real property. Such fees discourage development and add to the cost of real property acquisition.

1.9 The Association recognizes that factory-built housing, manufactured housing and other types of non-stick built housing provide an affordable alternative to traditional types of housing and expand ownership opportunities for people in North Dakota.

1.10 The Association advocates local control of planning and zoning policies that encourage the development and availability of all housing types including manufactured housing. (See sections 1.6 and 1.7).

## **2. GOVERNMENT REGULATION**

2.1 The ND ASSOCIATION OF REALTORS® believes that competition in a free enterprise system is the

best way to meet the needs and market demands for real property. We urge government at all levels to reduce impediments which prevent the private sector from meeting the needs and demands for real property more efficiently and effectively.

2.2 The Association strongly opposes exclusionary zoning, no-growth ordinances and moratoriums as such laws and policies limit the supply of housing, restrict economic and investment opportunities, and contribute to higher housing costs.

2.3 The Association believes that government at all levels should be efficient, responsive and economical. We support and encourage the cooperation and regionalization of governmental entities in sharing provision of services so as to avoid duplication and cut costs.

2.4 The Association believes that government regulatory procedures affecting real property should be simplified. Unnecessary and complex regulations delay real property transactions and increase costs associated with the transfer and use of real property.

2.5 The Association advocates just reimbursement and demonstrated proven need as unconditional requirements for the confiscation of private property by the government. We oppose unreasonable confiscation.

2.6 The Association supports efforts to keep homeowners in their homes through housing rehabilitation and the use of smart technology.

### **3. TAXATION**

3.1 While we realize the importance of many Government programs funded through property tax, we believe tax revenues should be equitably collected from other sources. Real property should only be taxed for the actual services it receives (i.e. law enforcement, fire protection, appropriate administrative fees etc.)

3.2 The Association favors a tax system that fosters economic growth and healthy real estate markets. We oppose any primary residence property tax freeze that negatively impacts decisions about homeownership and ownership of real property. We encourage public support of homeownership and real estate investments through income tax advantages. We support income tax deductions that encourage private investment.

3.3 The Association believes that government fees should not exceed the reasonable cost of providing the service for which the fee is charged. We oppose an increase of government fees leading to the surreptitious increase of taxes.

3.4 Recording fees. The Association believes that Government recording and document fees should

not exceed the actual cost of recording or document preservation expenses.

**3.5 Speculation Taxes.** The Association opposes the taxation of capital gains realized on the sale of real property.

**3.6 Taxes on Services.** The Association opposes any effort to impose a sales tax on real estate brokerage services or on any other real estate-related services (e.g., tax on commission fees, rental fees, appraisal fees, tax on advertising, etc.)

#### **4. ENVIRONMENTAL PROTECTION**

**4.1** The Association opposes unreasonable restriction on the use of privately owned property including shore land zone controls, open space requirements, protection of public/private water supplies, moratoriums and no growth policies that have adverse economic effects on employment, housing and the tax base. The Association urges all levels of government to respect the concept that private property ownership is made up of a bundle of rights, which includes use. If such use is denied or abridged by government for the benefit of the people, the cost of "taking" should be equitably distributed. The individual property owner should not be expected to pay for measures that benefit the public good and a broad number of citizens and which, in effect, limit the individual's private property rights.



4.2 The Association urges collective and cooperative action by lawmakers, government representatives, general industry and real estate industry leaders, and environmental groups to address and resolve the problems and challenges of environmental protection and responsible land use.

## **5. ENERGY CONSERVATION**

5.1 The ND ASSOCIATION OF REALTORS® supports voluntary energy conservation measures including favorable financing for costs incurred to reduce energy consumption.

5.2 The Association supports the development and voluntary use of alternative energy sources to reduce dependence on non-renewable forms of energy.

5.3 The Association opposes mandatory energy audits or mandatory energy ratings for real property, but supports voluntary energy audits to assist in decisions to purchase property or upgrade efficiency.

5.4 4.1 The ND ASSOCIATION OF REALTORS® supports protection and preservation of North Dakota's environment and natural resources provided economic development, accessibility of housing for all ND citizens and private property rights are not overly and unreasonably restricted.

## **6. AGENCY**

The Association supports agency disclosure on single-family residential and 1-4 unit multi-family properties that requires that all licensees provide timely, written disclosure which lists agency relationships available under state law. "Agency" is defined as the relationship that results when one person authorizes another to act on his/her behalf, subject to his/her control, and the other person consents to act as his/her agent.

## **7. LICENSE LAW AND REAL ESTATE PRACTICE**

7.1 The Association supports and endorses real estate brokerage licensing laws and regulation. We support the existence of a competent and adequately funded state Real Estate Commission to oversee the business and professional conduct of real estate licensees.

7.2 The Association believes that real estate brokerage license laws and regulations must reflect the practical demands and dynamics of real estate brokerage practice and business operation.

7.3 The Association advocates professionalism and competency in real estate brokerage practice through formal and informal education, training and research. We support mandatory pre-licensure education and mandatory continuing education for all licensees.

7.4 The Association supports use of technology as part of real estate practice including Internet, digital and smart device communications.

## **8. FAIR HOUSING**

8.1 The ND ASSOCIATION OF REALTORS® acknowledges and supports the right of all people to freely choose where they will live, regardless of race, color, religion, sex, disability, handicap, familial status, national origin, sexual orientation or gender identity or status with respect to marital status or receipt of financial assistance. This right is protected under federal and/or state fair housing laws and is a standard of practice of the *Code of Ethics of the National Association of REALTORS®*.

8.2 The Association believes that equal opportunity in housing can best be achieved through observance of the law, public and industry education, and mutual cooperation of the real estate brokerage industry and the public in a free and open housing market.

## **9. CONSUMER PROTECTION**

9.1 The ND ASSOCIATION OF REALTORS® supports and encourages dissemination of information which helps buyers, sellers, lessors, lessees, and other parties in a real estate transaction know and understand their rights and obligations as clients

and customers, such as Agency Disclosure forms or Property Condition statements from the seller.

9.2 We recognize the importance of professionalism of home inspectors, appraisers, assessors and other real estate related professions that may include registration, certification, mandatory education, and standards of conduct.

## **10. ANTITRUST COMPLIANCE**

10.1 The ND Association of REALTORS® believes that vigorous and fair competition is essential to the preservation of our free enterprise system. We advocate strict compliance with federal and state antitrust laws.

10.2 The Association recognizes that compensation is a matter of individual agreement between broker and client and that any individual or collective attempt to fix, set, or control rates of compensation by the association or any of its members is a violation of federal and state antitrust law.

## **11. GOVERNMENT & POLITICAL AFFAIRS**

11.1 The ND Association of REALTORS® supports the purpose and objectives of political action committees and the REALTOR® Party and will continue to operate and encourage the activities of the ND ASSOCIATION OF REALTORS® POLITICAL



**ACTION COMMITTEE (ND RPAC) and POLITICAL  
ACTION FUND (ISSUES & MOBILIZATION).**

**11.2 The Association urges its member to work diligently toward effecting more efficient, responsive and economic government at all levels. We encourage the involvement of REALTORS® in local, state, and national government and political activities as a means of achieving public policies and laws which preserve and protect the economic interests of the real estate industry and the right of all people to own, use and transfer real property.**

*Approved and adopted by the ND Association of  
REALTORS®: October 7, 2010  
Amended and adopted by the ND Association of  
REALTORS®: July 24, 2014  
Amended and adopted by the ND Association of  
REALTORS®: January 4, 2017  
Reviewed and accepted by the ND Association of  
REALTORS®, June 13, 2018*

For more information contact:

**NDAR**  
**701-355-1010 or [Jill@ndrealtors.com](mailto:Jill@ndrealtors.com)**

www.ndrealtors.com/about-ndar/

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## North Dakota Association of REALTORS®

### Mission Statement:

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

### Vision:

NDAR is the trusted voice of real estate and the advocate for a better real estate future.





**NDAR**

## News & Events

### Online Class Payment & Registration Link

click here

### NDAR Board & Committee Meetings

Detailed Meeting Schedule Coming Soon!

**June 13-14, 2018**

📍 Grand Forks, ND  
📍 Hilton Garden Inn - 4301 James Ray Drive #701-775-6000

Click [LEARN MORE](#) for additional info.

[LEARN MORE](#)

## NDAR Newsletter

### April 2018 - Spring Issue

- Interview with NDAR President Ben Schroeder
- President's Message
- Local Board News
- RPAC Corner
- 2018 Convention of the Dakotas Registration Info

[READ REPORT](#)

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### Member Login

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User ID: enter your NRDS ID #

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# LEGAL HOTLINE

Every membership service will provide each Broker/Manager a rapid response to routine questions on issues of the agency, antitrust, license law disclosure, contract law and other real estate issues in the operation of a real estate firm. Local Board Executive Officers may also access the Legal Hotline.

The Hotline is not your lawyer, it is a source of legal information for you. It is for you, not to pass along to clients and customers. No attorney/client relationship is established between you and the law firm retained to respond to your questions. Therefore, there is no right to confidentiality, and a record of your question and its response may be maintained at the office of the North Dakota Association of REALTORS®. We want a stronger, more expert profession; the Hotline is part of the NDAR effort to achieve it.

This service is free to any DR and can be accessed easily. Simply dial the toll free number, state your name and company, and that you have a Legal Hotline question. Casey Chapman, or another assigned attorney from his law firm, will field your question right away (unless they are in court or are involved with another client). If no attorney is available, you may leave your questions with the legal aid and Casey Chapman will return to call to you as soon as possible. The Legal Hotline will operate from 9:00 a.m. until 12:00 noon and from 1:00 p.m. until 4:00 p.m. Monday through Friday, excluding holidays.

The number of the Legal Hotline is **258-6030** or **888-338-7805** Please keep in mind that the service is provided for **YOU** as the DR (designated REALTOR®, which is usually the managing Broker), it is not intended for you to seek information to pass along to sales staff, clients or customers.

Please call Claus or Jill at the NDAR office (800-279-2361) if you have questions.

---

## LEGAL HOTLINE

### Frequently Asked Questions

by categories (Property Law, Agency Law, Contract Law)

#### PROPERTY LAW:

Shoreland Rights: What are the rights of an adjoining landowner to the shoreline of a river.

Response: Under North Dakota law, a landowner, who adjoins a navigable river, has rights (not absolute ownership) to the river's low watermark, and has absolute ownership rights from the river's high watermark and onto the adjoining land. Likewise, the state has absolute ownership rights from the low watermark and below (basically, the riverbed), but also has rights, held on behalf of the public, to the area between the low watermark and the high watermark. Basically, this shore area, between the low watermark and the high watermark, is a joint use area. The adjoining landowner can use the land for access to the water, for docking to the water, and the like, the public also has the right to use this shore area for navigation, boating, and the like.

Mineral Reservation: If a warranty deed does not contain a specific reservation of mineral rights, what happens?

Response: If there is no specific reservation of mineral rights, the mineral rights pass with the surface rights. If the deed reserves the rights to "all minerals," then all minerals are in fact reserved to the seller, with the exception of gravel, clay, and scoria, unless specifically named in the reservation clause. (Section 47-10-25, N.D.C.C.)

Real Estate Fixtures: Broker listed property for sale. Prior to receipt of any offers, the tenant on the property expressed an intent to sell certain items located upon this rural property, such as a windbreak, a corral, and some feed troughs. The owner expressed concern about the issue. A complication in this case was the fact that the owner and the tenant had previously been married, and the current owner/tenant relationship was created under the divorce decree.

Response: Under a lease arrangement, the listed items, such as a corral, a feed trough, and a windbreak, might be identified as trade fixtures, which can be removed by a tenant "if the removal can be effected without injury to the premises, unless the thing has become an integral part of the premises by the manner in which it is affixed." There are no easy answers in the area of fixtures, and the result will depend on an individual determination, in each case, by the judge. However, a permanent windbreak, which assumably is set into the ground, is most probably a fixture. A corral, which is permanently fixed into the ground, is probably a fixture, while a corral, which is maintained on portable stands, is probably not a fixture.

Homestead Laws: Broker has a pending sale of property involving three lots. A homestead dwelling sits on one lot, with two adjoining lots, over which the driveway extends. Several personal judgments have been lodged against the homeowners. Is there homestead protection under these circumstances?

Response: In North Dakota, the first \$80,000 in equity in a homestead dwelling is protected from personal judgments [Note: There is no protection against mortgages on the homestead]. In this particular circumstance, the net sale proceeds, pursuant to the sales contract, would be less than \$80,000; therefore, the actual homestead lot is clearly covered by the homestead protection, and the judgment creditors will be entitled to no proceeds from sale and, just as importantly, the sellers will be able to pass good title to the homestead lot to the buyers. As for the two adjoining lots, it is my opinion that these lots are likewise covered by the homestead protection. The last sentence of Section 47-18-01, North Dakota Century Code, which defines the homestead, reads as follows: "In no case shall the homestead embrace different lots or tracks of land unless they are contiguous." It is an element of legislative interpretation that the legislature does not waste time with extraneous words; in other words, every sentence is assumed to have a specific purpose. It is difficult to read the designated last sentence, without concluding that, whenever lots adjoin the homestead lot, they are entitled to homestead exemption, subject to the \$80,000 dollar limit. Since the legislature did not provide any distinction for determining when contiguous lots are included, or are excluded, from the homestead exemption, it is my opinion that the homestead exemption extends to the homestead lot, and

those "contiguous" (touching) parcels of land, which are selected by the homestead owner, within the dollar limits of the exemption. The North Dakota courts, including the federal court sitting in North Dakota, have long held that the homestead statutes are to be given a liberal construction, since the loss of a homestead protection is not favored in the law. See, e.g., in Re Lippert, 113 Bankr. 576 (Bankr. D.N.D. 1990).

**Redemption Period for Personal Property:** Broker was informed by a client that the client had a period of redemption, following the repossession of personal property, for a period of six months.

**Response:** While real estate mortgages have determined periods of redemption, varying from sixty days to one year, there is generally no established period of redemption for a personal property repossession. Therefore, unless a judge specifically ordered a six month period of redemption, for some unusual, it could be expected that the period of redemption on personal property repossession is probably measured in terms of days, rather than months.

## **AGENCY LAW:**

**Suicide Disclosure:** Broker represents seller with property, upon which suicide occurred. If broker becomes a dual agent, is disclosure of the suicide required.

**Response:** Under Section 70-02-01-19, North Dakota Administrative Code, the occurrence of a suicide on property does make the property "psychologically impacted." Under the following section, Section 70-02-01-20, North Dakota Administrative Code, the fact that a property is "psychologically impacted," as defined in the previous section, is "not a material or substantial fact that is required to be disclosed in the sale, lease, exchange, or other transfer of real estate." Although this code section was passed in 1992, prior to the statutory changes recognizing buyer agency in 1995, the Real Estate Commission has taken no action to expand the administrative code section, in a way to create a duty of disclosure. Therefore, under the current administrative code scenario, disclosure is not required.

**Buyer Agency Interference:** Broker A submits an offer for Broker A's buyer client ["Buyer"] on a parcel of property, which is listed by Broker B. Shortly thereafter, Broker A learns that Broker B sold a different parcel of property to Buyer; Broker B received no communication on the negotiations and/or sale.

**Response:** (i) Under Section 70-02-03-11, North Dakota Administrative Code, a broker is prohibited from negotiating a sale "with an owner," if the broker knows that the owner has a contractual arrangement with another broker. There is no comparable provision for buyer's brokers, (ii) Assuming that this was the sale of a residential property, Broker B did have the duty of disclosure under Section 70-02-03-15.1, North Dakota Administrative Code. Therefore, at the time of "first substantive contact", Broker B should have informed the Buyer regarding Broker B's agency relationship under Section 70-02-03-15.1(2)(c), North Dakota Administrative Code. Likewise, under Section 70-02-03-15.1(7), Broker B would have been required to offer Buyer the applicable agency disclosure forms, at which time one would suspect that the discussion of agency relationship would have arisen. Finally, under Section 70-02-03-15.1(7)(c), North Dakota Administrative Code, no broker may deal "unfairly with any party to a real estate transaction, regardless of whether the party is represented by that licensee." Since Broker B had entertained an offer from the Buyer, through Broker A, Broker B had knowledge of the agency relationship between Broker A and Buyer, and should have clearly explained the agency issues on the applicable disclosure forms, in order to assure informed consent of the Buyer to proceed. (iii) As a separate issue, there may be questions under Article 16 of the Board of Ethics of the North Dakota Association of Realtors, which is a private organization. Article 16 prevents any Realtor taking action "inconsistent with the agency or other exclusive relationship recognized by law that other Realtors have with clients." Under Standard of Practice 16-5, Broker B was precluded from soliciting a buyer agreement from the Buyer, assuming that Broker B had knowledge of Broker A's representation; if Broker A refused, after inquiry, to disclose the expiration date of the buyer agency contract, then Standard of Practice 16-5 does authorize contact between Broker B and the Buyer, regarding a possible buyer agency relationship upon the expiration of the existing buyer agency agreement. Standard of Practice 16-9 requires a broker, prior to entering an agency relationship, to affirmatively make reasonable efforts to determine the existence of a conflicting agency agreement. Under Standard of Practice 16-13, all dealings "with buyers/tenants who are subject to an exclusive agreement," are required to be carried on with the client's broker, and not with client, "except with the consent of the client's agent or broker or except where such dealings are initiated by the client." As a result, depending on the facts of this situation, Broker B may have violated Article 15 of the Code of Ethics under the North Dakota Association of Realtors.

**Appointed Agency:** Broker questioned whether appointed agency could be used on an "as need" basis.

**Response:** Under the provisions of Section 70-02-03-17, North Dakota Administrative Code, a broker is allowed to use the concept of appointed agency, after a broker has adopted an office policy for broker agency. Suggested policy formats are available through the North Dakota Real Estate Commission. Once a policy is adopted, it is my opinion that appointed agency could be used on a "case by case" basis. However, the broker was also advised that, given the purpose of appointed agency, the use of appointed agency, as an alternative to dual agency, should be strongly considered.

**Disclosure of Encroachment:** After listing property, a broker discovered an encroaching fence. Seller and buyer were properly advised regarding the fence. Does the broker have any further obligation to remedy the problem?

**Response:** In my opinion, the broker's obligation was satisfied when the broker disclosed the defect in the property boundaries. At that point, it is the obligation of the parties, by contract provisions, or otherwise, to actually remedy the situation.

**Commission Paid to Salesperson:** Broker has an agent who may be completing sales for an internet firm, accepting the fee, but not sending the compensation through the broker's account.

**Response:** A sales person can only work under the authority of a licensed broker. Therefore, the licensed broker has the right, pursuant to agreement with the sales person, to control the sales actions, in disposition of funds, in all of the sales person's real estate transactions.

**Agent during Foreclosure:** Broker has a listing agreement with a property owner. Foreclosure proceedings have been instituted, and it appears that the foreclosure is about to be completed. The lien holder then contacted the broker, asking to list the property.

**Response:** The broker has a fiduciary duty to the owner, who is the broker's client. If the broker "drops" the owner, in favor of the lien holder, while the owner still has rights in the property, there is certainly the appearance of a breach of the fiduciary duty of loyalty between the broker and the owner. I advise waiting until the redemption period expires and then, when the lien holder becomes the owner of the property, and when the owner

has lost all rights in the property, there is probably no more potential breach of duty.

**Broker as Appointed Agent:** Broker asked about appointed agency. Broker was a practicing broker and was concerned about situations which would arise, when the broker was representing a party to the transaction.

**Response:** Under Section 70-02-03-17(2)(b), North Dakota Administrative Code, and appointed agent is allowed to reveal confidential information to the designated broker "for seeking advice or assistance for the benefit of the client." Where the designated broker is also a practicing broker, this issue can become difficult because the designated broker will also have fiduciary duties to that designated broker's client. As a result, it does not appear that a true appointed agency is possible in those situations where the designated broker is representing one of the firm's clients in a transaction. In that case, a dual agency relationship seems to arise; a designated broker could provide advice and assistance to the client of the appointed agent by appointing an additional agent, within the firm, as appointed agent for the client. Section 70-02-03-17(3)(a)(4), in such event, the designated broker should advise the appointed agent's client, in writing, of the appointment of the additional agent.

**Appointed Agency:** Broker questioned the application of dual agency under the concept of appointed agency. If a broker is a practicing broker, and has a listing agreement with a seller, what is the relationship when an agent, who has been designated to represent a buyer under the appointed agency theory, brings an offer to the broker's client?

**Response:** The North Dakota Administrative Code does not deal specifically with this issue. Under Section 70-02-03-17, N.D.A.C., a designated broker is entitled to receive confidential information from an appointed agent for the purpose of "seeking advice or assistance for the benefit of the client about a possible transaction;" however, once the designated broker receives this information, the broker is required to protect the confidentiality of the information. [70-02-03-17(2)(b)]. As a result, the designated broker, who is participating in the transaction, will have, under the provisions of this section, access to the confidential information from the broker's own client, and confidential information from the appointed agent's client. First, it appears that a dual agency transaction arises from these facts and that both clients should be advised about the dual agency. The dual agency is created, it seems, by the designated broker's access to confidential information from both clients. Second, there seems to be the possibility, if clearly created by office policy, that a designated broker, prior to the receipt of any confidential information from the appointed agent's client, could appoint another agent within the office, as an additional appointed agent, to give advice to the original appointed agent. [Section 70-02-03-17(3)(a)(4)]. .discussion of appointment of "new or additional" agents].

**Dual Agency:** In a dual agency situation, seller-client has accepted an offer on the property. However, seller-client has instructed the broker that, due to contingencies on the purchase agreement, the house should continue to be shown and backup offers will be considered. Broker is concerned about the duty to the buyer-client.

**Response:** While a broker has modified duties in the case of dual agency, certain client duties continue under that form of representation. Where the seller-client has specifically directed that the property should continue to be shown, the broker has a duty to follow those instructions. The buyer-client should be informed of this decision. Both seller-client and buyer-client should be clearly informed regarding the nature of the contingencies in the contract and regarding the working of a backup offer.

**Wants Access:** Broker has property listed for a non-resident seller. A local bank, which has a mortgage on the property, made contact with a broker, for the key, so that the lender could enter the home and take certain actions, ostensibly to protect the property. At the time, broker did not have permission from the seller-client to allow the lender onto the property.

**Response:** The agency arrangement, under which the broker was marketing the property, does not include the right to allow third persons onto the property, for reasons which do not specifically relate to the agency relationship. Absent consent from the seller-client, the broker has no right to provide access to the lender.

**Disclosure of Registered Sex Offender:** Buyer's agent is representing Buyer in the purchase of an apartment building. Buyer's agent received knowledge that a tenant in the apartment building is a sex offender, who is required to be registered. Does the Buyer's agent need to inform the Buyer about the presence of the sex offender.

**Response:** Yes. When a Buyer's agent receives knowledge, the Buyer is deemed to have received that knowledge. As a result, the Buyer's agent has a duty to inform the Buyer regarding any information, which the Buyer's agent holds. Even though the Buyer, on the Purchase Agreement, is advised of the general Megan's Law requirements, it is my opinion that, where the Buyer's agent has specific information that a sexual offender is residing on the property which Buyer is purchasing, the Buyer's agent is better advised to inform the Buyer. [Caution: This opinion should not be construed to extend to neighboring houses, etc., since this opinion is intended only to deal with the issue of a sexual offender, who is presently living, and will continue to live, on the premises which Buyer is purchasing].

**Unpaid Specials:** Buyer client asked agent to check on special assessments balance at time of contracting. Agent reported to buyer client the estimated special assessments, arising from a current project, where the special assessments had not yet been certified. On the day before closing, the special assessment totals (which were much higher than estimated) were published in the newspaper, but neither agent nor buyer saw the publication. Buyer wants agent to assume responsibility for the difference.

**Response:** It appears that the request for information was made at about the time of contracting. When the agent returned information to the buyer client, and indicated that there were no definite numbers, buyer client made the decision to proceed with the sale, in spite of the uncertainty.

**Material Defects Disclosure:** Seller was involved in some litigation, perhaps class action litigation, against the house siding manufacturer in the early 1990's. As a result of the litigation, Seller received some resolution, but did not replace the siding. Broker listed the house for sale, the house sold, in 1998. The settlement was not disclosed to the buyer, and broker had no actual knowledge of the settlement. The buyer wants the seller and the broker to pay for siding repair on the house.

**Response:** Under Section 70-02-03-15.1(6), a North Dakota Real Estate Licensee has an obligation, in spite of the Rules of Confidentiality, to disclose "material defects in the property of which the licensee is aware or which would constitute fraudulent misrepresentation unless disclosed." As an addition, in some court cases, courts have held that the duty of a real estate licensee includes the duty of reasonable inquiry which would apprise the real estate licensee, with that licensee's expertise of potential problems with the house. In this case, there is no evidence that the broker, even though a dual agency had been created, had any knowledge that the seller had received compensation for the siding, and there does not appear to be any

indication that the broker should have known that the seller received compensation for the siding. Under the circumstances, it does not appear that any duty, running from the broker to the buyer, has been breached.

## **TRACT LAW:**

**Q: Judgment:** Can a lender obtain a deficiency judgment in North Dakota, following foreclosure of a residential mortgage? A mortgage company is threatening a deficiency judgment against the seller of a house, where it appeared that the house may have insufficient value to satisfy all existing mortgages.

**Response:** Under North Dakota law, deficiency judgments on residential mortgages are very difficult to achieve. I gave the statutory citation to the broker, who had a copy of the century code in his office, and pointed out the detailed procedure which must be followed, prior to the entry of a deficiency judgment on a residential dwelling.

**Q: Delivery of Deed:** Does delivery of a deed, contrasted with recording of the deed, constitute closing of a transaction? In this case, a deed had been delivered to the closing agent, which was also the buyer's bank, but the buyer later instructed the closing agent to halt the recording of the deed. Buyers claimed that the transaction had never been completed.

**Response:** In North Dakota, a transfer of title is completed upon delivery of the deed; recording of the deed is not a necessity. I did suggest that there was an issue here, concerning whether delivery of the deed by sellers to the closing agent (buyer's bank) was actual delivery of the deed to the buyer. I suggested that, if the buyer had designated the closing agent as agent for receipt of the deed, it is possible that the transaction was completed at the time of the delivery of the deed to the bank.

**Q: Quitclaim Deed for Security:** Broker was contacted by an individual who wants to sell a house. About two years previously, the potential seller had received the house by quit claim deed from the prior owner, who still resides in the house. Apparently, the quit claim deed was received as security for a loan, which was to be repaid within about 90 days. The potential seller wants to make sure that the potential seller has authority to sell the house.

**Response:** A quit claim deed, when intended as security for a debt, can be construed as a mortgage by the courts. It is generally presumed that a deed, given from one person to another, is an absolute conveyance of title to the property, just as the wording shows. However, the prior owner of the house has an opportunity to convince the judge, by clear and convincing evidence, that the deed, rather than intended as an absolute conveyance, was actually intended as security for a debt, like a mortgage. In this case, where the potential seller acknowledges that the deed was taken as security for a debt, it is probable that the potential seller could not sell the property, without dealing with the rights of the prior owner. Those rights could include the necessity of public sale and a right of redemption (possibly up to one year).

**Q: First Right of Refusal:** Broker is confronted with a purchase agreement which offers a "right of first refusal" and questions the meaning of the phrase.

**Response:** A "right of first refusal" is a generic term which can have several different meanings. You would be more appropriate that, in addition to mere use of the phrase, there is a more detailed explanation of the nature of the right, i.e., how it works, the time lines involved, and the like. In its generic form, a "right of first refusal, is the right of the holder to have the first chance to meet, or accept, an offer to purchase a particular piece of property. For example, if I have a right of first refusal against parcel A, and if Buyer makes an offer to purchase parcel A, then I have the right to meet the exact terms of Buyer's purchase offer, and to therefore become the purchase in place of the Buyer.

**Q: Protection Period on Listings:** Under a listing agreement, broker had a protection period, extending for a certain period of time, if the broker sent a list of prospective buyers to the seller, within a stated number of days after the termination of the listing agreement. Broker had failed to send the required statement, and seller had sold the property to a buyer, who had been shown the property by the broker. Seller refused to pay a fee to the broker, and broker had started a small claims action.

**Response:** Listing agreement is an agency agreement and, where the broker has control over the wording on the form, the court is going to interpret any ambiguities most strongly against the broker. In this case, since the broker did not comply with the terms of the listing agreement, broker will probably not be able to recover under the listing agreement. However, broker may have a claim for quantum meruit, since the broker actually brought the buyer to the property. Quantum meruit is based on the theory that, even if there is no actual contract, a person (here, the broker) may be able to recover on an implied contract, since the broker did perform services which were helpful to the seller.

**Q: Submitting All Offers:** Broker reports that, in dealings with another brokerage, the other brokerage refuses to report any new offers, while that brokerage's seller-client is considering an offer to purchase.

**Response:** Under the provisions of Section 43-23-11.1(1)(u), N.D.C.C., it is clear that a licensee is required "to submit all offers to a seller when such offers are received prior to the seller accepting an offer in writing and until the broker has knowledge of such acceptance." Until that time, however, it is my opinion that all offers must be presented to the seller for consideration.

**Q: Expiration Date on Listings:** Broker reports that, upon reviewing another brokerage's firm listing agreement copy, in the possession of the sellers, there is no expiration date provided.

**Response:** Under Section 43-23-11.1(1)(n), N.D.C.C., a licensee is required, at risk of Real Estate Commission discipline, to "include a fixed date of expiration in any written listing agreement. A copy of such listing agreement, showing the fixed date of expiration, must be left with the principal."

**Q: Earnest Money:** If a seller accepts buyer's release of earnest money, and cashes the check, does the seller waive the right to bring further legal action against the buyer.

**Response:** Yes. The acceptance of the earnest money is most probably an acceptance of the earnest money is liquidated damages for the breach of the listing agreement.



Three Day Decision: If a buyer submits an offer, with a \$1,000 earnest money payment, and if the seller accepts the offer, does the Buyer have a 3-day period, within which the contract can be rejected and the earnest money returned.

Response: While there are certain types of contracts which, under federal law, or under state law, have 3-day cancellation provisions, there is no such provision for a real estate contract in North Dakota. Once accepted, the contract is binding on the parties.

Will Seller Accept All Good Offers?: Broker had property listed. A potential buyer made an offer on the property. Seller does not want to accept the offer. Buyer, due to a history of personal/family relationships between the seller's family and the buyer's family. Is the seller obligated to accept the offer?

Response: A seller is never required to accept a purchaser offer, unless the rejection is triggered by one of the reasons, such as race, ethnic origin, etc., which are prohibited by the law. On the facts of this case, it appears that a history of personality is the reason for rejection; such a reason is not illegal.

Back Up Offer: Buyer's broker submits an offer to seller's broker. Seller's broker says that seller has already verbally accepted another offer on the property; however, to the best of buyer broker's knowledge, the offer is still in the mail. Seller's broker suggests that, when the new offer arrives, it can only be considered as a backup offer.

Response: Under the statute of frauds, a party is not bound to a land contract until that party has signed the agreement. Here, the seller had not yet signed the agreement and, although the first buyer may be bound under certain circumstances, seller is probably not yet bound. Under Section 43-23-11(1)(u), N.D.C.C., a broker has an obligation to present all offers to the seller, until there has been acceptance in writing. Here, since there has been no written acceptance by seller, the new offer should be presented to the seller, so that the seller has the opportunity to make the decision, regarding which offer to accept.

Disputed Earnest Money: Broker has \$1,000 of earnest money in trust account. Both seller and buyer were represented by agents from the firm; seller and buyer cannot agree on resolution of the earnest money. Broker was seeking suggestions on disposition of the earnest money.

Response: If the parties will not agree to a resolution of the earnest money, it is my opinion that, if the broker returns the earnest money to one of the parties, there is risk that the other party will bring a court action, not only against the recipient party, but also against the broker. A better resolution, with a small earnest money, is a hearing before the small claims court. The small claims process is relatively quick and relatively inexpensive. While the court costs in small claims are probably about \$20, usually with no attorney fee involved, a case in district court has a filing fee alone of \$80, and generally requires the assistance of attorneys. Another possible option is Section 32-11-02, North Dakota Century Code, which allows any party [this law was not passed specifically for real estate brokers] to deposit disputed money into court, giving notice to the claimants of the deposit. Then, the claimants are required to apply to the court for disposition of the money. The downside of the "deposit" method is that it seems to force the seller and buyer into district court, with its attendant expense.

Used Contract Addendum: In a sale, which will potentially involve an FHA loan, or other addenda to the contract, which can remain private between seller and buyer, and which are not disclosed to FHA?

Response: Under North Dakota Administrative Code, Section 70-02-03-09, the use of any 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 qualify for a loan which the purchaser could not otherwise obtain," is an action which could subject the agent to punishment by the North Dakota Real Estate Commission.



## 2022

Licensees need a minimum of 9 hours of approved continuing education hours each renewal period. There are two Mandatory Topics for the year of 2022. New licensees (as well as those coming out of escrow) have different requirements and should check with the ND Real Estate Commission if additional information is needed. **CE hours must be taken between November 16, 2021 and November 15, 2022 to renew your license for 2023.**

NAME: \_\_\_\_\_

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