

## **CHAPTER 4.1-83 LIVESTOCK DEALERS**

### **4.1-83-01. Definition.**

In this chapter, unless the context otherwise requires, "livestock dealer" means a person that buys horses, mules, cattle, hogs, goats, or sheep from a producer or a livestock auction market:

1. On the person's own account, more than once per year for the purpose of resale within thirty days;
2. On commission; or
3. For slaughter.

### **4.1-83-02. Livestock dealer - License required.**

1. Before a person may transact business as a livestock dealer, the person must be licensed by the agriculture commissioner.
2. This section does not apply to:
  - a. A packing plant, provided the plant's annual purchases of cattle, goats, hogs, horses, mules, or sheep do not exceed five hundred thousand dollars; or
  - b. The purchase of cattle, goats, hogs, horses, mules, or sheep:
    - (1) By a livestock cooperative from a member of the cooperative; or
    - (2) By one member of a livestock cooperative from another member.

### **4.1-83-03. Application for livestock dealer's license - Required information.**

To obtain a livestock dealer's license, a person must complete an application and submit it to the agriculture commissioner. The application must include:

1. The applicant's name and:
  - a. The name of each partner if the applicant is a partnership;
  - b. The name of each corporate officer and the state of incorporation if the applicant is a corporation; or
  - c. The name of each manager and the state of organization if the applicant is a limited liability company;
2. The applicant's mailing address; and
3. The applicant's principal place of business.

### **4.1-83-04. License - Fee - Expiration.**

1. The fee for a livestock dealer's license is fifty dollars.
2. A livestock dealer's license issued under this chapter expires on June thirtieth of each year.
3. A livestock dealer's license is not transferable.

### **4.1-83-05. Application for license - Posting of bond.**

1. As a condition of licensure, the applicant shall post a bond with the agriculture commissioner. The bond must be:
  - a. A surety bond;
  - b. A cash bond; or
  - c. An irrevocable letter of credit.
2. The agriculture commissioner must be named as the obligee.
3. The bond required by this section must be:
  - a. In an amount and form required by this chapter;
  - b. Applicable to the period during which the livestock dealer's license is in effect;
  - c. For the benefit of any person selling livestock to the livestock dealer or the dealer's agent; and
  - d. Conditioned for the payment of any financial obligation owed by a livestock dealer to another person in conjunction with the sale of livestock.

#### **4.1-83-06. Bond requirements - Alternative.**

Any applicant having a bond on file with the United States department of agriculture pursuant to the Packers and Stockyards Act, 1921 [7 U.S.C. 181 et seq.], may meet the requirements of section 4.1-83-05 by filing a copy of that bond with the agriculture commissioner, provided the commissioner is named as the trustee of the bond.

#### **4.1-83-07. Out-of-state applicant - Trustee.**

A bond posted by an out-of-state applicant for a livestock dealer's license may name as trustee a financially responsible, disinterested person who is satisfactory to the commissioner.

#### **4.1-83-08. Bond - Minimum amount.**

1. The agriculture commissioner shall determine the amount of the bond required in accordance with this chapter by using the same basis as that prescribed for livestock dealers who are subject to the provisions of the Packers and Stockyards Act, 1921 [7 U.S.C. 181 et seq.].
2. Notwithstanding subsection 1, if at the time of licensure or at any point during the period of licensure the agriculture commissioner has reason to believe that a bond is inadequate to secure the performance of the livestock dealer's obligations, the commissioner shall require an increase in the amount of the bond.
3. A bond required by this chapter may not be in an amount less than ten thousand dollars.

#### **4.1-83-09. Release of records - Confidentiality.**

1. As a condition of licensure, the applicant shall agree to provide to the agriculture commissioner, upon request, any financial record that the commissioner deems relevant for purposes related to:
  - a. The issuance of a livestock dealer's license; or
  - b. An investigation after issuance of a livestock dealer's license.
2. As a condition of licensure, the applicant shall file a records release with the agriculture commissioner, authorizing the commissioner to obtain, from any source, any financial record that the commissioner deems relevant for purposes related to:
  - a. The issuance of a livestock dealer's license; or
  - b. An investigation after issuance of a livestock dealer's license.
3. Any information gained by the agriculture commissioner under this section is confidential and may be provided only:
  - a. To federal authorities in accordance with federal law;
  - b. To the attorney general, state agencies, and law enforcement agencies, for use in the pursuit of official duties; and
  - c. As directed by an order of a court pursuant to a showing of good cause.

#### **4.1-83-10. Dealer's license - Grounds for denial - Hearing.**

1. The agriculture commissioner shall deny an applicant a livestock dealer's license if:
  - a. The applicant's current assets do not exceed the applicant's current liabilities; or
  - b. The applicant submitted false or misleading information in connection with the application.
2. The agriculture commissioner may deny an applicant a livestock dealer's license:
  - a. If after due investigation, the commissioner has reason to believe that the applicant has failed to pay, in a timely manner and without reasonable cause, prior obligations incurred in connection with livestock transactions;
  - b. If the applicant has failed to pay brand inspection fees or veterinary inspection fees, as required by law, within sixty days of the date on which they were due;
  - c. If the applicant has violated any of the laws of this state governing the handling, shipment, or transportation of livestock; or
  - d. For any other just and good cause.

3. Any applicant denied a license under this section may request a hearing before the agriculture commissioner within thirty days of the denial.

**4.1-83-11. Change of circumstance - Notification of agriculture commissioner.**

A livestock dealer shall notify the agriculture commissioner of:

1. Any legal change to the name in which the livestock dealer's license is issued;
2. Any change to the legal status of the livestock dealer; and
3. Any change in the nature and scope of the livestock dealer's business, if that change would warrant an increase in the amount of the bond posted by the dealer in accordance with this chapter.

**4.1-83-12. Records.**

Each livestock dealer shall keep records regarding all purchases and sales of livestock for a period of two years. The records may be examined by the agriculture commissioner upon request.

**4.1-83-13. Agent's license.**

Before an individual may serve as the agent of a livestock dealer, the individual must be licensed by the agriculture commissioner. In order for an individual to obtain an agent's license, the agent's principal must request the license, at the time and in the manner determined by the agriculture commissioner.

**4.1-83-14. Agent's license - Requirements - Liability of principal.**

Before the agriculture commissioner issues an agent's license, the commissioner shall verify that:

1. The agent's principal is a livestock dealer licensed in accordance with this chapter; and
2. The principal has filed with the agriculture commissioner a signed statement indicating that the principal is responsible for and will be held strictly liable for any acts and omissions arising out of the agent's livestock dealings, even if the dealings were not authorized by the principal.

**4.1-83-15. Agent's license - Grounds for denial.**

1. The agriculture commissioner may refuse to issue an agent's license:
  - a. If the individual seeking the license was previously denied a livestock dealer's license or an agent's license;
  - b. If the individual seeking the license had a livestock dealer's license or an agent's license revoked;
  - c. If the individual seeking the license has been convicted of an offense for which a term of imprisonment or a fine is authorized by statute; or
  - d. For any other just and good cause.
2. Any applicant denied a license under this section may request a hearing before the agriculture commissioner, within thirty days of the denial.

**4.1-83-16. Agent's authority - Limitation.**

While acting as an agent, an individual may not conduct any transaction involving livestock in the agent's own name.

**4.1-83-17. Order to cease and desist - Hearing.**

The agriculture commissioner may issue an order to cease and desist if the commissioner has reason to believe that a person has committed or is about to commit a violation of this chapter. If the agriculture commissioner issues a cease and desist order, the commissioner shall hold a hearing within thirty days of the issuance and within sixty days of the issuance, revoke the order or make it permanent.

#### **4.1-83-18. Investigation of livestock dealer - Hearing.**

1. a. The agriculture commissioner shall investigate the conduct of any livestock dealer if the commissioner has reasonable cause to believe that the livestock dealer may have violated this chapter or engaged in any activity that constitutes a ground for license suspension or revocation under this chapter.
- b. Subdivision 1 does not apply if an investigation is being conducted by the grain inspection, packers and stockyards administration.
2. If after conducting an investigation the agriculture commissioner has probable cause to believe that a violation of the chapter occurred or that the livestock dealer engaged in any activity that constitutes a ground for license suspension or revocation under this chapter, the commissioner may conduct a hearing to determine whether the license of the livestock dealer should be suspended or revoked.

#### **4.1-83-19. Grounds for suspension or revocation of license.**

The agriculture commissioner may suspend or revoke the license of a livestock dealer if:

1. The livestock dealer has violated this chapter;
2. The livestock dealer has violated any of the laws of this state governing the handling, shipment, or transportation of livestock;
3. The livestock dealer has been found guilty of deceit, fraud, dishonesty, forgery, or theft, as a dealer in livestock;
4. The livestock dealer submitted false or misleading information in connection with the application for licensure;
5. The livestock dealer has failed to maintain records that disclose all purchases and sales of livestock, as required by section 4.1-83-12;
6. The livestock dealer has refused the commissioner's request to provide financial records to the commissioner, as required by section 4.1-83-09;
7. The livestock dealer has failed to pay brand inspection fees or veterinary inspection fees, as required by law, within sixty days of the date on which they were due;
8. The livestock dealer is convicted under section 4.1-03-13 of failing to submit beef promotion assessments; or
9. The livestock dealer has failed to pay for livestock purchased in a timely manner and without reasonable cause.

#### **4.1-83-20. License suspension or revocation - Hearing - Appeal.**

1. Before the agriculture commissioner may suspend or revoke a livestock dealer's license, the commissioner shall:
  - a. Prepare a complaint;
  - b. Designate the time and place for a hearing; and
  - c. Serve a copy of the complaint and a notice of the hearing upon the livestock dealer at least fifteen days before the date of the hearing.
2. The agriculture commissioner shall serve the required notice by registered mail or in the manner provided by the North Dakota Rules of Civil Procedure for the service of a summons.
3. At the hearing, the agriculture commissioner shall take and receive testimony and evidence.
4. After the hearing, the agriculture commissioner shall issue an order to:
  - a. Dismiss the proceedings;
  - b. Suspend the livestock dealer's license; or
  - c. Revoke the livestock dealer's license.
5. The aggrieved party may appeal the order to the district court of the county in which the party maintains its principal place of business.

#### **4.1-83-21. Bond - Claim for relief.**

If a livestock dealer defaults in the provisions of any bond required by this chapter, the livestock dealer is deemed to be insolvent within the meaning of this chapter. The claim for relief

for damages upon the bond, and the amount recovered in any claim for relief for the conversion of livestock purchased by the livestock dealer while the license is in force and effect, constitutes a trust fund in the hands of the agriculture commissioner for all persons having a claim for relief against the livestock dealer on the bond.

**4.1-83-22. Appointment of trustee.**

1. Upon the insolvency of a livestock dealer, the agriculture commissioner may apply to the district court of the county in which the dealer maintains its principal place of business for appointment as the trustee.
2. Upon notice to the livestock dealer, as the court shall prescribe but not exceeding ten days, or upon a written waiver of notice by the dealer, the court shall hear and make a determination regarding the application in a summary manner.
3. If the court determines that the livestock dealer is insolvent within the meaning of this chapter and that it would be in the best interest of persons holding claims against the dealer for the purchase price of livestock sold to the dealer or to the dealer's agent that the agriculture commissioner execute the trust, the court shall issue an order appointing the commissioner as the trustee, without bond.
4. Upon being appointed as the trustee, the agriculture commissioner shall perform the duties of a trustee as set forth in this chapter.

**4.1-83-23. Possession of records and property - Notice to file claims.**

1.
  - a. Upon being appointed trustee, the agriculture commissioner shall take possession of all accounts and records pertaining to the livestock dealer's business. After reviewing the records, the agriculture commissioner may return to the dealer any records that are not necessary to the settlement of claims under this chapter.
  - b. Upon being appointed trustee, the agriculture commissioner shall take possession of all livestock purchased by the dealer under the dealer's license and remaining in the dealer's possession.
2. The agriculture commissioner, as trustee, shall publish a notice once each week for three consecutive weeks in the official newspaper of each county in which the livestock dealer was conducting business, directing any person having a claim against the dealer to file the claim and all supporting documentation with the commissioner no later than forty-five days from the last date of publication. Any person failing to meet the filing requirements set forth in the notice is barred from participating in any funds marshalled by the agriculture commissioner under this chapter.

**4.1-83-24. Maintenance of action - Marshalling of assets.**

1. The agriculture commissioner, as trustee, may in the name of the state upon its own relation but for the benefit of all claimants against the livestock dealer's bond, maintain suits or special proceedings upon the bond and against any person who has converted any of the livestock, for the purpose of marshalling all of the trust assets of the insolvent dealer and distributing the assets among the claimants.
2. However, recourse must be had against the bond before recourse is had against a person who knowingly and in good faith converted any of the livestock, unless the agriculture commissioner determines it necessary that all of the remedies be pursued at the same time.

**4.1-83-25. Remedy of claimants - Pursuit of separate action.**

1. A claimant may not pursue a separate claim for relief against the livestock dealer's bond unless the agriculture commissioner fails or refuses to apply for appointment as trustee.
2. A claimant may pursue concurrently with the agriculture commissioner, however, any other remedy against the livestock dealer or the dealer's property that the claimant

may have for the entire claim or for any deficiency that occurs after all payments have been made from the trust fund.

**4.1-83-26. Actions by agriculture commissioner - Exoneration.**

1. The agriculture commissioner may:
  - a. Prosecute an action for any claim arising under this chapter;
  - b. Appeal from any adverse judgment to the court of last resort; and
  - c. Settle and compromise any action if the commissioner determines that doing so is in the best interests of the claimant.
2. When the agriculture commissioner receives a compromise payment or the full amount of any bond or conversion claim, the commissioner may exonerate the person compromising or paying the claim from further liability growing out of the action.

**4.1-83-27. Moneys collected on claims - Required deposit.**

All moneys collected and received by the agriculture commissioner as trustee must be deposited in the Bank of North Dakota pending the marshalling of the fund.

**4.1-83-28. Report of amounts payable - Distribution of trust fund.**

1. Upon recovery of the trust fund, or so much of the fund as is recoverable or necessary to pay the outstanding claims, the agriculture commissioner shall file with the court a report showing the amount payable on each claim, after recognition of all proper liens, pledges, assignments, and deductions.
2. If the trust fund is insufficient to pay all claims in full, the agriculture commissioner shall prorate the fund among the claimants.
3. The court shall notify the claimants by mail regarding the proposed distribution and direct that the claimants show cause why the report and distribution should not be approved.
4. After holding a hearing on the matter, the court shall:
  - a. Approve or modify the report;
  - b. Issue an order directing that the trust fund be distributed; and
  - c. Discharge the agriculture commissioner from all duties as trustee.

**4.1-83-29. Court costs.**

The agriculture commissioner is not required to pay any filing fee or other court cost or disbursement in connection with an application for appointment as trustee or with any action brought under this chapter if the fee, cost, or disbursement accrues to the state or to a county in this state.

**4.1-83-30. Violations of chapter - Criminal penalty - Civil penalty.**

1. Any person violating this chapter is guilty of a class A misdemeanor.
2. Any person violating this chapter is subject to a civil penalty in an amount not to exceed five thousand dollars for each violation. The civil penalty may be adjudicated by a court or by the agriculture commissioner through an administrative hearing.