

## **CHAPTER 43-23.4**

### **REAL ESTATE BROKER TRUST ACCOUNTS**

#### **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 five-member real estate trust account committee. Three members must be realtors in this state who are members of the association and licensed to practice real estate in this state. The remaining two members may not be realtors. The term of office for members is three years, except that, as determined by lot, one realtor member first appointed shall serve for an initial term of one year, and one realtor member and one nonrealtor member first appointed shall serve an initial term of two years. No member may serve more than two successive three-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 one hundred eighty 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 one 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 one 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.