

## **CHAPTER 43-23 STATE REAL ESTATE COMMISSION**

### **43-23-01. Real estate commission - Members.**

The state real estate commission consists of five members, three of whom must be active real estate brokers, appointed by the governor. The commission shall organize by the election of a chairman.

### **43-23-02. Commission - Term - Duties - Records.**

The governor shall appoint each member of the commission for a term of five years. Terms must be staggered so the term of one member expires each year. At the expiration of the term of any member of the commission, the governor shall appoint a successor for a term of five years. A commissioner may not serve more than two consecutive five-year terms. In the event of a vacancy on the commission for any reason the governor shall appoint a member for the unexpired term of that member.

A majority of the commission, in a duly assembled meeting, may perform and exercise all of the duties and powers devolving on the commission. The commission may submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04.

### **43-23-03. Commission office - Executive director.**

The commission shall employ an executive director who shall furnish bond as required by the commission and who shall keep a record of all proceedings, transactions, communications, and official acts of the commission, and who is custodian of all moneys received for licenses which the executive director, shall deposit for safekeeping in depositories designated by the commission. The executive director is the custodian of all records of the commission and shall perform such other duties as the commission may require. The commission may fix the salary of the executive director, employ other employees as may be necessary to properly carry out the provisions of this chapter, fix salaries and prescribe duties of employees, and make other expenditures as necessary to carry out the provisions of this chapter. The commission shall meet annually and upon call by the executive director upon a written request of three or more members of the commission. The location of the office of the executive director must be at such places within the state as the commission may designate. The commission shall maintain all files, records, and property of the commission at the office of the executive director.

### **43-23-04. Commission - Compensation.**

The members of the commission are entitled to receive per diem, not to exceed the daily compensation rate a member of the legislative assembly is entitled to receive under section 54-35-10 for attendance at a legislative management committee meeting, as determined by the commission in the annual budget process, for each day actually engaged in the service of the commission and to be paid actual and necessary traveling expenses to be paid only from the fund derived from fees collected in the administration of this chapter. All moneys or fees collected or received by the commission must be deposited and disbursed in accordance with section 54-44-12.

### **43-23-05. Real estate license required.**

A person may not act as a real estate broker or real estate salesperson, or advertise or assume to act as a real estate broker or real estate salesperson, without a license issued by the real estate commission. A person is not entitled to collect any fees, compensation, or commission as a real estate broker or real estate salesperson without having first complied with the provisions of this chapter. A copartnership, association, corporation, or limited liability company may not be granted a license, unless at least one partner, shareholder, member, manager, or officer of the copartnership, association, corporation, or limited liability company, actually engaged as a real estate broker, holds a license as a real estate broker, and unless every employee who acts as a real estate salesperson for the copartnership, association, corporation, or limited liability company holds a license as a real estate salesperson.

**43-23-05.1. Organization of salesperson, broker, or broker associate permitted to be licensed - Fees.**

1. The commission may license an organization of a salesperson, broker, or broker associate if:
  - a. The organization is owned solely by an individual who is licensed as a salesperson, broker, or broker associate, or by that individual and that individual's spouse, or by that individual and other salespersons, brokers, and broker associates within the same firm as that individual;
  - b. The organization does not engage in any real estate transactions as a third-party agent or in any other capacity requiring a license under this chapter; and
  - c. The organization does not advertise or otherwise portray to the public the organization is a real estate broker or real estate brokerage firm.
2. The employing or associating broker of a salesperson, broker, or broker associate who is part of an organization is not relieved of any obligation to supervise the employed or associated salesperson, broker, or broker associate or of any other requirements under this chapter.
3. An individual who forms an organization is not by nature of that act relieved of any personal liability for licensed activities.
4. The commission may adopt rules establishing a one-time license fee for an organization licensed as a salesperson, broker, or broker associate.

**43-23-06. Definitions.**

Repealed by S.L. 1977, ch. 405, § 2.

**43-23-06.1. Definitions.**

As used in this chapter, unless the context otherwise requires:

1. "Appointed agent" means a licensee appointed by a designated broker of the licensee's real estate brokerage firm to act solely for a client of that brokerage firm to the exclusion of other licensees of that brokerage firm.
2. "Client" means a person that has entered a written agency agreement with a real estate brokerage firm.
3. "Commission" means the North Dakota real estate commission.
4. "Customer" means a buyer, prospective buyer, seller, lessee, or lessor that is not represented by that real estate brokerage firm in a real property transaction.
5. "Designated broker" means a licensee designated by a real estate brokerage firm to act on behalf of the brokerage firm.
6. "Dual agency" means a situation in which a real estate brokerage firm or the real estate brokerage firm's licensees owe a duty to more than one party in a real estate transaction. Dual agency is established only as follows:
  - a. When one licensee represents both the buyer and the seller in a real estate transaction; or
  - b. When two or more licensees, licensed to the same broker, each represents a party to the real estate transaction."Dual agency" does not exist unless both the seller and the buyer in a real estate transaction have written agency agreements with the same real estate brokerage firm. For purposes of "dual agency" a subagency arrangement is not a written agency agreement.
7. "Licensee" means a real estate broker, an associate real estate broker, or a real estate salesperson who is associated with a real estate brokerage firm.
8. "Real estate", "real property", "realty", or words of like import, means any interest or estate in land, including leaseholds, whether such interest or estate is corporeal, incorporeal, freehold, or nonfreehold, and whether situated in this state or elsewhere; provided, however, that the meaning as used in this chapter does not include oil, gas, or mineral leases, nor does it include any other mineral leasehold, mineral estate, or mineral interest of any nature whatsoever.

9. "Real estate broker", or "broker", means any person that, for another, for a fee, commission, salary, or other consideration, or with the intention or expectation of receiving or collecting such compensation from another, engages in or offers or attempts to engage in, either directly or indirectly by a continuing course of conduct or by a single act or transaction, any of the following acts:
  - a. Lists, offers, attempts, or agrees to list real estate or any interest in that real estate, or any improvements affixed on that real estate for sale, exchange, or lease.
  - b. Sells, exchanges, purchases, or leases real estate or any interest in that real estate, or any improvements affixed on that real estate.
  - c. Offers to sell, exchange, purchase, or lease real estate or any interest in that real estate, or any improvements affixed on that real estate.
  - d. Negotiates or offers, attempts, or agrees to negotiate the sale, exchange, purchase, or leasing of real estate or any interest in that real estate, or any improvements affixed on that real estate.
  - e. Buys, sells, offers to buy or sell, or otherwise deals in options on real estate or any interest in that real estate, or any improvements on that real estate.
  - f. Who is a licensee under this chapter and performs any of the acts set out in this subsection while acting in the licensee's own behalf.
  - g. Advertises or holds out as being engaged in the business of buying, selling, exchanging, or leasing of real estate or any interest in that real estate, or any improvements on that real estate.
  - h. Assists or directs in the procuring of prospects, calculated to result in the sale, exchange, or leasing of real estate or any interest in that real estate, or any improvements on that real estate.
  - i. Publicly markets for sale an equitable interest in a contract for the purchase of real property between a property owner and a prospective purchaser.
10. "Real estate brokerage firm" means a person that is providing real estate brokerage services through that person's licensees and which is licensed by the commission as a real estate brokerage firm.
11. "Real estate salesperson" means any person that for a fee, compensation, salary, or other consideration, or in the expectation or upon the promise of that compensation, is employed or engaged by a licensed real estate broker to do any act or deal in any transaction as provided in subsection 9 for or on behalf of such licensed real estate broker.

**43-23-07. Real estate brokers and salespersons - Exceptions.**

1. The term "real estate broker" or "real estate salesperson" does not include:
  - a. Any person, partnership, association, corporation, or limited liability company who is a bona fide owner or lessor or who accepts or markets leasehold interests in residential or agricultural property and performs any of the aforesaid acts with reference to property owned or leased by them, nor does it apply to regular employees thereof, when the acts are performed in the regular course of or as an incident to the management of the property and the investment therein.
  - b. An attorney at law, admitted to practice in this state, handling sales of real estate in the course of estate or guardianship administration in district court, or trust administration, bankruptcy proceedings, receiverships, or like actions subject to approval by a court of competent jurisdiction, or sales of real estate arising in the usual course of the practice of law.
  - c. Any person selling real estate as an auctioneer, provided the sale is advertised as a bona fide public auction.
  - d. Any bank or trust company or any of its officers or employees in the performance of their duties as an officer or employee of the bank or trust company.
  - e. Any person holding in good faith a duly executed power of attorney from the owner, authorizing a final consummation and execution for the sale, purchase,

- lease, or exchange of real estate when such acts are not of a recurrent nature and done with the intention of evading this section.
- f. Any person while acting as a receiver, trustee, administrator, executor, guardian, or under court order, or while acting under authority of a deed, trust, or will.
  - g. Public officers while performing their duties.
2. This section does not exempt from the definition of "real estate broker" or "real estate salesperson" for consideration publicly marketing for sale an equitable interest in a contract for the purchase of real property between a property owner and a prospective purchaser.

#### **43-23-08. License standards.**

1. Licenses and license renewals may be granted only to persons who bear a good reputation for honesty, truthfulness, and fair dealing and who are competent to transact the business of a real estate broker or a real estate salesperson in such manner as to safeguard the interest of the public, and whose real estate license has not been revoked in this or any other state within two years before the date of application. To determine the competency of applicants, the commission shall prescribe and hold examinations at designated times and places.
2. In addition to the requirements established by subsection 1, an applicant for a broker's or salesperson's license must be at least eighteen years of age.
3. Every applicant for a license as a real estate broker:
  - a. Must have been actively engaged as a licensed real estate salesperson for a period of at least two years preceding the date of application; or
  - b. Must have had experience as determined by the commission to be substantially equal to that which a licensed real estate salesperson would ordinarily receive during a period of two years.
4. As a prerequisite for licensure, an applicant for a salesperson's license shall furnish to the commission evidence the applicant has successfully completed at least ninety hours in courses of study approved by the commission. An applicant for a broker's license must have successfully completed an additional sixty hours in courses of study approved by the commission. An applicant for a salesperson's license may take the licensing examination before fulfillment of the prerequisite educational requirement; however, the commission may not issue a salesperson's license to an applicant unless satisfactory evidence of completion of this prerequisite educational requirement is furnished to the commission. An applicant for a broker's license must have satisfactorily fulfilled the educational requirement before taking the broker's licensing examination.
5. If the commission finds an applicant could not acquire employment as a licensed real estate salesperson because of conditions existing in the area where the salesperson resides, the experience requirements established in subdivisions a and b of subsection 3 may be waived by the commission. The educational requirements of subsection 4 may not be waived by the commission, but guidelines may be established by which applicants who have engaged in certain educational courses of study which are closely related to the real estate profession may be deemed to have satisfied this requirement.
6. The commission may adopt reasonable rules and regulations pursuant to the provisions of chapter 28-32 relative to procedures for licensing, approval of coursework, and for the type of certification or proof of coursework completion that must be submitted.

#### **43-23-08.1. Conviction not bar to licensure - Exceptions.**

Conviction of an offense does not disqualify a person from licensure under this chapter unless the commission determines that the offense has a direct bearing upon a person's ability to serve the public as a real estate broker or salesperson, or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

#### **43-23-08.2. License renewal - Continuing education required.**

1. The commission may establish the conditions under which each applicant for renewal of a broker's or salesperson's license, in addition to the requirements of section 43-23-08, shall submit proof of participation in approved continuing education. In establishing the conditions for continuing education, the commission may determine the required number of hours, the frequency and conditions of reporting requirements, and all other terms and conditions of continuing education compliance. The commission shall set standards for the approval of education courses that qualify for satisfaction of this requirement, and shall maintain a current list of education courses so approved. Attendance at a course or the completion of an education course must be documented in accordance with procedures established by the commission. The commission may adopt rules concerning implementation of this section pursuant to chapter 28-32.
2. A license may not be renewed by the commission unless the proper certification showing fulfillment of the continuing education requirements of this section and the appropriate licensing fees are submitted to the commission in accordance with section 43-23-13.1.
3. The commission may exempt licensees from the continuing education requirements of this section for reasons relating to the licensee's health, military service, or for other good cause. Licensees who have held a real estate license for fifteen continuous years on January 1, 1984, are exempt from the requirements of this section.

#### **43-23-08.3. Disclosure of sexual offenders.**

A licensee is not liable for any action resulting from any disclosure or nondisclosure relating to the registration of sexual offenders under section 12.1-32-15.

#### **43-23-08.4. Criminal history record checks.**

The commission may require an applicant for licensure or a licensee whose licensure is subject to investigation by the commission to submit to a statewide and nationwide criminal history record check. The nationwide criminal history record check must be conducted in the manner provided by section 12-60-24. All costs associated with obtaining a background check are the responsibility of the applicant or licensee.

#### **43-23-09. License application.**

Every application for a real estate broker's license or a real estate salesperson's license must contain such data and information as the commission may require.

#### **43-23-10. Nonresident brokers - Reciprocity - Consent to service.**

A nonresident broker regularly engaged in the real estate business as a vocation and who maintains a definite place of business and is licensed in another state may not be required to maintain a place of business within this state. The commission shall recognize the license issued to a real estate broker by another state as satisfactorily qualifying the nonresident broker for license as a broker; provided, the nonresident broker has qualified for license in the broker's own state. Every nonresident applicant shall file an irrevocable consent that suits and actions may be commenced against the applicant in the proper court of any county of the state in which a claim for relief may arise, in which the plaintiff may reside, by the service of any process or pleading authorized by the laws of this state, on any member of the commission, or the executive director, the consent stipulating and agreeing service of the process or pleading is taken and held in all courts to be as valid and binding as if due service had been made upon the applicant in this state. The consent must be duly acknowledged. Any service of process or pleading must be by duplicate copies, one of which must be filed in the office of the commission and the other immediately forwarded by registered mail to the last-known main office of the applicant against whom the process or pleading is directed, and no default in the proceedings or action may be taken except upon affidavit or certificate of the commission or the executive director, that a copy of the process or pleading was mailed to the defendant as required under

this section, and judgment by default may not be taken in any such action or proceeding until after thirty days from the date of mailing of the process or pleading to the nonresident defendant.

**43-23-11. License refusal, revocation - Hearing - Appeal.**

Repealed by S.L. 1973, ch. 357, § 2.

**43-23-11.1. Investigations, grounds for refusal, suspension or revocation of license - Hearing - Appeal.**

1. The commission upon its own motion may investigate, and upon the verified complaint in writing of any person, shall investigate the activities of any licensee or any person that assumes to act in such capacity within the state, and has the power to suspend or revoke a license, impose a monetary fine and actual costs incurred by the commission in the investigation and prosecution of the complaint, require course attendance, or issue a letter of reprimand, or any combination thereof, if the licensee, in performing or attempting to perform any of the acts included within the scope of this chapter, has performed one or more of the following:
  - a. Making a material false statement in the licensee's application for a license or in any information furnished to the commission.
  - b. Making any substantial and willful misrepresentation with reference to a real estate transaction which is injurious to any party.
  - c. Making any false promise of a character such as to influence, persuade, or induce a party to a real estate transaction to that person's injury or damage.
  - d. Acting for more than one party in a transaction without the knowledge and consent of all parties to that transaction for whom the licensee acts.
  - e. Failing to account for or to remit, within a reasonable time, any moneys coming into the licensee's possession belonging to others; commingling funds of others with the licensee's own, failing to keep such funds of others in an escrow or trust account with a bank or other recognized depository in this state, or keeping records relative to the deposit, which must contain such information as may be prescribed by the rules and regulations of the commission relative thereto.
  - f. Being convicted or pleading guilty or nolo contendere before any court of any felony, or of a misdemeanor involving theft, forgery, embezzlement, obtaining money under false pretenses, bribery, larceny, extortion, conspiracy to defraud, or other similar offense. A certified copy of the record of conviction is conclusive evidence of conviction in such cases.
  - g. Claiming or taking of any secret or undisclosed amount of compensation or commission or the failure of a licensee to reveal to the licensee's principal or employer the full amount of the licensee's compensation or commission in connection with any acts for which a license is required under this chapter.
  - h. Failing or refusing upon demand to produce any document, book, or record in the licensee's possession or under that person's control, concerning any real estate transaction under investigation by the commission.
  - i. Offering real property for sale or lease without the knowledge and consent of the owner or the owner's authorized agent or on any terms other than those authorized by the owner or agent.
  - j. Refusing, because of race, color, national origin, religion, sex, age, physical or mental disability, or status with respect to marriage or public assistance to show, sell, lease, or rent any real estate to prospective renters, lessees, or purchasers.
  - k. Failing or refusing upon demand to furnish copies of any document pertaining to any transaction dealing with real estate to any person whose signature is affixed to the document.
  - l. Paying compensation or commission in connection with any real estate sale, lease, or other transaction to any person that is not licensed as a real estate broker or real estate salesperson under this chapter.

- m. Failing to disclose to an owner the licensee's intention or true position if the licensee directly or indirectly through a third party purchases for the licensee or acquires or intends to acquire any interest in or any option to purchase property that has been listed with the licensee's office for sale or lease.
  - n. Failing to include a fixed date of expiration in any written listing agreement and failing to leave a copy of the agreement with the principal.
  - o. A broker failing to deliver to the party or parties represented by the broker a complete detailed closing statement in every real estate transaction, at the time the transaction is consummated, showing all of the receipts and disbursements handled by the broker for the party or parties represented by the broker, and to retain true copies of the statements in the broker's files.
  - p. Violating any provisions of this chapter or rule or regulation adopted by the commission.
  - q. Accepting a commission or valuable consideration as a real estate salesperson for the performance of any of the acts specified in this chapter, or by rule or regulation of the commission, from any person except the licensed real estate broker under whom the individual is licensed as a salesperson.
  - r. If the licensee is a broker, allowing any unlicensed salesperson to do any act or engage in any activity regulated by this chapter or under rule or regulation of the commission which is carried on in the name of or under the authority of the broker.
  - s. A salesperson failing to place with that salesperson's employing broker for deposit in the brokerage trust account all real estate trust moneys received by the salesperson within twenty-four hours of the time of receipt; or failure of the employing broker to place the moneys for deposit within twenty-four hours of the time of receipt from the salesperson. Provided that if trust money is received on a day before a holiday or on another day before which the depository is closed where the trust fund is maintained, the moneys must then be deposited during the next business day of the depository.
  - t. The licensee failing to reduce an offer to writing when a proposed purchaser requests the offer be submitted to the seller, or failure of the licensee to submit all offers to a seller when the offers are received before the seller accepting an offer in writing and until the broker has knowledge of the acceptance.
  - u. Any other conduct, whether of the same or of a different character than specified in this subsection, which constitutes dishonesty or fraudulent conduct, whether arising within or without the pursuit of that person's licensed privilege.
  - v. Any conduct that in the determination of the commission does not meet the generally accepted standard of expertise, care, or professional ability expected of real estate brokers or salespersons, provided that any disciplinary measures by the commission under this subdivision must be limited to the issuance of a letter of reprimand to the offending licensee.
2. If the commission declines or fails to approve an application submitted to the commission, the commission immediately shall give notice of that fact to the applicant, and upon request from the applicant, filed within twenty days after the receipt of the notice, shall fix a time and place for hearing, of which twenty days' notice must be given to the applicant and to other persons interested or protesting, to offer evidence relating to the application. In such cases the commission shall fix the time for such hearing on a date within sixty days from receipt of the request for the particular hearing, provided the time of hearing may be continued from time to time with the consent of the applicant. As a result of such hearing, the commission may approve the application if all other applicable provisions of this chapter have been met, and permit the applicant to take the examination to determine whether the applicant must be licensed, or the commission may sustain the commission's prior decision refusing to approve the application.
  3. A license may not be revoked or suspended, a monetary fine or actual costs may not be imposed, course attendance may not be required, nor any letter of reprimand

issued except after hearing before the commission with a copy of the charges having been duly served upon the licensee and upon sustaining of the charges for suspension, revocation, fine, payment of actual costs incurred, required course attendance, or reprimand. The provisions of chapter 28-32 apply to and govern all proceedings for suspension, revocation, fine, payment of actual costs incurred, required course attendance, or reprimand of licenses or licensees.

4. In any order or decision issued by the commission in resolution of a disciplinary proceeding in which disciplinary action is imposed against a licensee, the commission may direct the licensee to pay a fine not to exceed five thousand dollars and actual costs, including attorney's fees, incurred by the commission in the investigation and prosecution of the case. All fines collected must be deposited in the commission's license fee account.

#### **43-23-12. Broker's place of business - License of salesperson.**

1. Every individual, partnership, association, corporation, or limited liability company licensed as a real estate broker is required to have and maintain a definite place of business within this state, for the transaction of real estate business, except as provided in section 43-23-10. The license as broker and the license of each real estate salesperson licensed under that broker must be prominently displayed in said office or the licensee's name and license number listed on the broker's website. The place of business must be designated in the license, and a license issued under the authority of this chapter may not authorize the licensee to transact business under any other broker. In case of removal from the designated broker, the licensee shall make application to the commission before the removal or within five days after the removal, designating the new location of such office, whereupon the commission immediately shall issue a new license for the new location for the unexpired period. The broker's home may qualify as the place of business.
2. All licenses issued to real estate salespersons must designate the broker of the salespersons. Prompt notice in writing, within five days, must be given to the commission by any real estate salesperson of a change of broker, and of the name of the licensed broker into whose supervision the salesperson is about to enter, and a new license must be issued by the commission to the salesperson for the unexpired term of the original license, upon the return to the commission of the license previously issued. The change of broker by any licensed real estate salesperson, without notice to the commission, automatically cancels that person's license. Upon termination of a real estate salesperson's supervision by a broker, the broker immediately shall notify the commission in writing. It is unlawful for any real estate salesperson to perform any of the acts contemplated by this chapter either directly or indirectly after that person's supervision by a broker has been terminated, until the license has been reissued by the commission to a new broker.

#### **43-23-12.1. Real estate brokerage firm - Duties required.**

1. A real estate brokerage firm and the real estate brokerage firm's licensees, which provide services through a written agency agreement for a client, are bound to that client by the duties of loyalty, obedience, disclosure, confidentiality, reasonable care, diligence, and accounting, subject to the provisions of this chapter and subject to any rules adopted under this chapter. The agency relationship, which must be established through a written agency agreement, may be a seller agency, a buyer agency, a dual agency, an appointed agency, a subagency, or another form of agency relationship. If a different relationship, including a nonagency relationship with a customer, between the real estate brokerage firm and the person for which the real estate brokerage firm performs the services is intended, the relationship must be disclosed in writing pursuant to rules adopted by the board.
2. If a buyer, prospective buyer, or seller is not represented by a real estate brokerage firm in the real property transaction, that buyer or seller remains a customer, and, as to that customer, the real estate brokerage firm and the real estate brokerage firm's



licensees are nonagents that owe the following legal duties: to perform customary acts typically performed by real estate licensees in assisting a transaction to the transaction's closing or conclusion if these acts are to assist the customer for which the services are directly provided; to perform these acts with honesty and good faith; and to disclose to the customer any adverse material facts actually known by the licensee which pertain to the title of the real property, the physical condition of the real property, and defects in the real property. These limited duties are subordinate to any duties the real estate brokerage firm and the real estate brokerage firm's licensees owe to a client in the same transaction.

3. Unless otherwise agreed in writing, a real estate brokerage firm and the real estate brokerage firm's licensees are not obligated to a client, to a customer, or to any other person to discover defects in any real property, to verify the ownership of any real property, or to independently verify the accuracy or completeness of any statement or representation made by any person other than the real estate brokerage firm and the real estate brokerage firm's licensees involved in the transaction under question.
4. Unless the licensee is directly involved in a transaction regarding the affected real property, this section does not result in imputing knowledge, regarding the affected real property, of one licensee within a real estate brokerage firm to another licensee within the same real estate brokerage firm or in imposing a duty upon a licensee within a real estate brokerage firm to disclose facts that are known by that licensee regarding the affected real property to another licensee within the same real estate brokerage firm.
5. If a real estate brokerage firm and the real estate brokerage firm's licensees represent two or more buyers or lessees as clients that desire to make an offer for the purchase or lease of the same real property, the real estate brokerage firm and the real estate brokerage firm's licensees do not breach any duty by assisting such clients with multiple offers, even though the interests of such clients are competing, and are not required to disclose the existence of competing offers, except as otherwise set forth under this subsection. The real estate brokerage firm and the real estate brokerage firm's licensees shall continue to honor agency duties to such clients, except as limited under this subsection. However, if an individual licensee has a written agency agreement with two or more buyers that desire to make an offer for the purchase or lease of the same real property, that licensee shall disclose to those competing buyer clients the fact that a competing written offer has been submitted by another buyer client of that licensee.
6. If a real estate brokerage firm and the real estate brokerage firm's licensees represent two or more sellers or lessors as clients that desire to offer competing real property for sale or lease, the real estate brokerage firm and the real estate brokerage firm's licensees do not breach any duty to such clients by performing such services, even though the interests of such clients are competing. In such event, the real estate brokerage firm and the real estate brokerage firm's licensees shall continue to honor agency duties to such clients, except as limited under this subsection.

#### **43-23-12.2. Duties supersede common law.**

1. The duties of a real estate brokerage firm, and the firm's licensees, as specified in this chapter or in rules adopted to implement this chapter, supersede any fiduciary duties of that real estate brokerage firm and the firm's licensees, to a person based on common-law principles of agency to the extent that those common-law fiduciary duties are inconsistent with the duties specified in this chapter or in rules adopted to implement this chapter.
2. A client is not liable for a wrongful act, an error, an omission, or a misrepresentation made by a licensee in connection with the licensee providing brokerage services for the client, including brokerage services provided under a subagency relationship, unless the client knows or should have known of the wrongful act, error, omission, or misrepresentation or unless the licensee is repeating a misrepresentation made by the client. This subsection supersedes any conflicting common-law duty of the client.

3. A real estate brokerage firm that is providing brokerage services to a client is not liable for a wrongful act, an error, an omission, or a misrepresentation made by the client, listing agent of another real estate brokerage firm, or subagent of another real estate brokerage firm, unless the real estate brokerage firm knew or should have known of the wrongful act, error, omission, or misrepresentation or unless the client, listing agent of another real estate brokerage firm, or subagent of another real estate brokerage firm is repeating a misrepresentation made by the real estate brokerage firm.
4. This section does not limit the liability of a licensee under section 43-23-11.1 nor of a client for substantial and willful misrepresentations made in reference to a real estate transaction. As used in this section, the term "real estate brokerage firm" includes the firm and brokers and agents who work for the firm.

#### **43-23-12.3. Brokerage firm may appoint agents.**

1. A real estate brokerage firm, through a designated broker, may appoint in writing to a client the licensee or licensees within the brokerage firm who will act as appointed agent of that client to the exclusion of all other licensees within the brokerage firm.
2. If a real estate brokerage firm appoints an appointed agent for clients of the agency who are, or may be, parties in the same real estate transaction, the brokerage firm and its licensees are not dual agents as to those clients, and there is no imputation of knowledge or information among or between said clients, the real estate brokerage firm, and the appointed agents.
3. Nothing in this section prevents a real estate brokerage firm from entering a dual agency relationship with its clients after complying with any disclosure requirements provided by this chapter or by rules adopted under this chapter.

#### **43-23-13. Fees.**

Fees for real estate brokers and real estate salespersons are as follows:

1. A fee of not more than two hundred dollars, as set by the commission, must accompany an application for an individual's real estate broker's license and for each annual renewal of the license.
2. For each license issued to a partnership, association, corporation, limited liability company, trust, cooperative, or other firm or entity, foreign or domestic, and for each annual renewal of the license, a fee of not more than two hundred dollars, as set by the commission.
3. For an individual's real estate salesperson's license and for each annual renewal of the license, a fee of not more than two hundred dollars, as set by the commission.
4. The commission shall set and collect reasonable fees to help offset the cost of operating the commission.

#### **43-23-13.1. License renewal.**

Every person licensed to practice as a real estate broker or real estate salesperson shall register annually with the commission and pay the appropriate annual renewal fee as provided in section 43-23-13. The application for renewal must be accompanied by such certification as required by this chapter and rules of the commission to show compliance with the educational requirements of sections 43-23-08 and 43-23-08.2, and must be submitted to the commission with the appropriate fee no later than the application deadline set by the commission. A licensee that fails to file a timely application for the renewal of any license and pay the renewal fee on or before the application deadline may file a late renewal application, together with the required educational certification, before January fifteenth of the subsequent year and shall pay, in addition to the renewal fee, a late fee as set by the commission for each month or fraction of a month after the application deadline. Any license not renewed by January fifteenth must be canceled. The cancellation must be performed without any notice or opportunity for hearing. Any person whose license has been canceled and which desires relicensure must be required to satisfy the application and examination requirements for prospective licensees in accordance with this chapter and rules of the commission.

A licensee may not engage in any activity after December thirty-first of any year for which a license is required under this chapter unless that person's license has been renewed by the commission.

**43-23-14. Fund handling by broker.**

Repealed by S.L. 1973, ch. 358, § 2.

**43-23-14.1. Handling of funds by brokers.**

Except as otherwise provided in this section, every broker, at all times, shall maintain in the broker's name or firm name, a separate, noninterest-bearing trust account designated as such in a federally insured financial institution in this state in which the broker immediately shall place as a demand deposit all funds not the broker's own coming into the broker's possession, in accordance with rules adopted by the commission. This requirement extends to funds in which the broker may have some future interest or claim and includes earnest money deposits. A broker may not commingle the broker's personal funds or other funds in a trust account, except a broker may deposit and keep a sum not to exceed five hundred dollars in the account from the broker's personal funds, which sum must be specifically identified and deposited to cover service charges related to the trust account. In conjunction with the account, the broker shall maintain at the broker's usual place of business, books, records, contracts, and other necessary documents so the adequacy of the account may be determined at any time. Trust accounts and other records must be open to inspection by the commission and the commission's duly authorized agents at all times during regular business hours at the broker's usual place of business.

A broker that does not accept trust funds in real estate brokerage transactions and which has applied for and received a waiver from the real estate commission is not required to maintain a designated trust account. However, if a broker does not maintain a trust account and later receives trust funds in a real estate brokerage transaction, the broker shall open a designated trust account as required by this section and deposit any trust funds in accordance with rules adopted by the commission. A broker shall maintain a record tracking the earnest money associated with all transactions even if the funds are deposited directly with the title company and the broker does not take possession of the funds.

**43-23-15. Real estate courses - Studies.**

1. The commission may conduct or hold or assist in conducting or holding real estate courses or institutes, and incur and pay the necessary expenses in connection therewith, which courses or institutes must be open to any licensee without any charge or fee.
2. The commission may assist libraries, real estate brokers and real estate salespersons, and institutes and foundations, with financial aid or otherwise, in providing texts, sponsoring studies, surveys, and programs for the benefit of real estate and the elevation of the real estate business.

**43-23-16. Licensee list.**

The executive director shall maintain a list online of the names and addresses of all licensees licensed by the board under the provisions of this chapter, together with such other information relative to the enforcement of the provisions of this chapter as the board may deem of interest to the public.

**43-23-17. Penalty.**

Any person violating section 43-23-05 is guilty of a class B misdemeanor. Any person violating section 43-23-14.1 is guilty of an infraction.

**43-23-18. Injunctions authorized to enforce law.**

If any person or entity has engaged in any act or practice that constitutes or will constitute a violation of this chapter, the commission may commence an action in the district court of the

county in which the person or entity resides or in the district court of the county in which the act or practice occurred for an injunction to enforce compliance with this chapter or rules adopted by the commission. The commission is not required to give any bond for commencing this action. Upon a showing that the person or entity has engaged in any act or practice in violation of this chapter or rules adopted by the commission, the district court may enjoin the act or practice and may make any order necessary to conserve, protect, and disburse any funds involved.

**43-23-19. Errors and omissions insurance required of salespersons and brokers - Rules.**

The real estate commission shall adopt rules pursuant to chapter 28-32 requiring as a condition of licensure that all real estate salespersons and brokers, except those which hold inactive licenses, carry errors and omissions insurance covering all activities contemplated under this chapter.

**43-23-20. Group insurance coverage authorized - Independent errors and omissions coverage.**

The real estate commission may negotiate by bid with an insurance provider for a group policy under which coverage is available to all licensees with no right on the part of the insurer to cancel coverage provided to any licensee, except as provided by rules adopted by the commission. A licensee may obtain errors and omissions insurance independently if the coverage complies with the minimum requirements established by the commission.

**43-23-21. Commission to determine conditions of errors and omissions coverage.**

The real estate commission shall determine the terms and conditions of errors and omissions coverage required by this chapter, including the minimum limits of coverage, the permissible deductible, and the permissible exceptions.

**43-23-22. Notice of terms and conditions of errors and omissions - Certificate of coverage.**

Each licensee must be notified of the required terms and conditions of coverage at least thirty days before the annual license renewal date. A certificate of coverage, showing compliance with the required terms and conditions of coverage, must be filed annually with the real estate commission by each licensee who elects not to participate in the group insurance program administered by the real estate commission.

**43-23-23. Errors and omissions coverage not required if premium limit unobtainable.**

If the real estate commission is unable to obtain errors and omissions insurance coverage at a reasonable premium, the errors and omissions insurance requirement of this section does not apply during the year for which coverage cannot be obtained.

**43-23-24. Wholesale buyers and sellers - Disclosure.**

1. As used in this section:
  - a. "Residential real property" means real property with fewer than five dwelling units.
  - b. "Wholesaler" means a person that enters an agreement to make income or profit from the transfer of or equitable interest in residential real property.
2. A wholesaler of residential real property shall disclose in writing to all parties to the agreement that the wholesaler holds an equitable interest in the property, may not be able to convey title to the property, and intends to make a profit or income from the transfer of the equitable interest.
3. Notwithstanding any other provision contained in a contract for sale of residential real property, if a wholesaler violates this section, the seller may cancel the contract for sale at any time before the close of escrow without penalty and may retain any earnest money paid by the wholesaler.

4. Notwithstanding any other provision contained in the contract for sale, if a wholesaler violates this section, the buyer may cancel the contract for sale at any time before the close of escrow without penalty and must be refunded all earnest money paid by the buyer.