

The law on wholesaling real estate in North Dakota

With guidance from the North Dakota Real Estate Commission 11.12.2024

Definition of real estate broker

A real estate broker includes anyone who "[p]ublicly markets for sale an equitable interest in a contract for the purchase of real property between a property owner and a prospective purchaser." North Dakota Century Code (NDCC) 43-23-06.1(9)(i)

Why an active North Dakota license is required for wholesaling North Dakota real estate

Under North Dakota (ND) law, engaging in the activities of a real estate broker, or in the activities of a real estate salesperson employed or engaged by a broker, requires licensure by the North Dakota Real Estate Commission (NDREC), and that license must be active to conduct real estate business. NDCC 43-23-05 and NDAC 70-02-01-05(1) and (2)

Definition of wholesaler of resident real property

A wholesaler is "a person that enters an agreement to make income or profit from the transfer of or equitable interest in residential real property." NDCC 43-23-24(1)(b)

Disclosure requirement when wholesaling residential property

A wholesaler of residential real property (real property with fewer than 5 dwelling units) shall disclose in writing to all parties to the agreement that:

- the wholesaler holds an equitable interest in the property, and
- the wholesaler may not be able to convey title to the property, and
- the wholesaler intends to make a profit or income from the transfer of the equitable interest. NDCC 43-23-24(1) and (2)

These 3 points, above, should be included in a disclosure form, addendum, within the agreement, or in some written communication to disclose a licensee is wholesaling.

Disclosure recommendations when wholesaling non-residential property

The Commission strongly recommends that licensees engaged in wholesaling give appropriate disclosures in all wholesaling arrangements, even with non-residential property, to avoid potential violations of other disclosure laws and regulations, including North Dakota Administrative Code (NDAC) 70-02-03-13 requiring disclosures of a licensee's personal interest in the purchase or sale of real property, and NDCC 43-23-11.1(1)(i) authorizing disciplinary action by the Commission against licensees who offer "real property for sale or lease...on any terms other than those authorized by the owner or agent."

The Commission recommends disclosing the following 3 points in non-residential property wholesaling transactions:

- the wholesaler holds an equitable interest in the property, and
- the wholesaler may not be able to convey title to the property, and
- the wholesaler intends to make a profit or income from the transfer of the equitable interest.

These 3 points, above, can be included in a disclosure form, addendum, within the agreement, or in some written communication to disclose a licensee is wholesaling.

Possible consequences of operating without a real estate license in North Dakota

A person who acts “as a real estate broker or real estate salesperson, or advertise[s] or assume[s] to act as a real estate broker or real estate salesperson,” or “collect[s] any fees, compensation, or commission as a real estate broker or real estate salesperson, without” a license issued by the NDREC, may be found guilty of a class B misdemeanor. NDCC 43-23-05 and 43-23-17

NDREC may send a letter to persons who may be wholesaling without a license, informing them of the law, and how to apply for a license to comply with the law.

What brokers and other licensees can opt to do about licensed and unlicensed wholesaling

1. Check if the potential buyer is an active ND real estate licensee in the Licensee Directory at the NDREC website, www.realestatend.org.
2. Consult your private attorney for advice on how to handle any transaction you believe may involve an unlicensed wholesaler.
3. Choose not to be involved in the transaction OR do not agree to the terms in a transaction that you think may involve unlicensed wholesaling.
4. Brokers: Opt to adopt firm policies to outline steps your licensees should take when your licensees:
 - are wholesaling, including disclosures (residential and nonresidential property),
 - know or believe the prospective purchaser of the firm’s listing intends to wholesale, with or without a license, and
 - are dealing with a person, such as an Attorney In Fact, who might not be wholesaling, but is standing in for the individual/s who will be the ultimate purchaser/s at closing.

History

The 68th North Dakota Legislative Assembly passed House Bill 1190 in 2023, amending the real estate license law, NDCC 43-23, to require a real estate license for wholesaling of real estate located in North Dakota. The law took effect August 1, 2023, amending and adding several new provisions, including NDCC 43-23-06.1(9)(i), 43-23-07(2), and 43-23-24.

https://ndlegis.gov/assembly/68-2023/regular/bill-overview/bo1190.html?bill_year=2023&bill_number=1190

Authority

NDREC has jurisdiction over licensed real estate activity as described in ND real estate license law, which is NDCC 43-23 and NDAC Chapter 70. NDREC has authority to investigate the activities of any licensee or any person that assumes to act in such capacity within the state. NDCC 43-23-11.1(1)

Links

ND license law -- <https://www.realestatend.org/information/license-law/>

NDREC -- <https://www.realestatend.org/>