

## **CHAPTER 43-23.3 REAL ESTATE APPRAISERS**

### **43-23.3-01. Definitions.**

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

1. "Analysis" means a study of real estate other than estimating value.
2. "Appraisal" means an analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, real estate. An appraisal may be classified by subject matter into either a valuation or an analysis.
3. "Appraisal assignment" means an engagement for which a person is employed or retained to act, or would be perceived by the public as acting, as a disinterested party in rendering an unbiased supportable appraisal.
4. "Appraisal foundation" means the appraisal foundation incorporated as an Illinois corporation on November 30, 1987.
5. "Appraisal report" means any communication of an appraisal.
6. "Appraisal subcommittee" means the appraisal subcommittee of the federal financial institutions examination council.
7. "Appraiser" means a person who engages in appraisal activity for valuable consideration.
8. "Apprentice appraiser" means a person who holds a valid permit as an apprentice appraiser.
9. "Board" means the North Dakota real estate appraiser qualifications and ethics board.
10. "Certified appraiser" means a person who holds a valid permit as a certified residential or general appraiser.
11. "Certified general appraiser" means a person who holds a valid permit as a certified general appraiser.
12. "Certified residential appraiser" means a person who holds a valid permit as a certified residential appraiser.
13. "Licensed appraiser" means a person who holds a valid permit as a licensed appraiser.
14. "Permit" means the document issued by the board, verifying that the person named on the permit has fulfilled all prerequisites to practice either as an apprentice appraiser, a licensed appraiser, or a certified appraiser.
15. "Real estate" means an identified parcel or tract of land including improvements, and interests, benefits, and rights inherent in the ownership of real estate.
16. "Uniform standards of professional appraisal practices" means standards of appraisal promulgated by the appraisal foundation as adopted and modified by the board. The standards adopted and modified by the board must meet the minimum standards adopted by the appraisal foundation.
17. "Valuation" means an estimate of the value of real estate or real property.

### **43-23.3-02. North Dakota real estate appraiser qualifications and ethics board.**

1. The governor shall appoint the board. The board must consist of five members. One member must represent the public; one member must be a representative of the financial industry; and three members must be appraisers, at least one of which is experienced in the appraisal of agricultural property.
  - a. Each appraiser member of the board must be either a licensed or certified appraiser, but at least two of the appraiser members must be certified appraisers.
  - b. The governor shall appoint the financial industry representative from a list of qualified individuals submitted by the North Dakota bankers associations, the credit union association of the Dakotas, and the North Dakota farm credit system associations. Each of these entities may submit two names of candidates to the governor. The public member of the board may not be engaged in the practice of real estate appraising.
2. The term of each member is five years. A member may not serve more than two consecutive five-year terms, after which at least two years must pass before the

governor may reappoint that former member to the board. The governor shall appoint members so the terms of no more than two members expire each year. A member of the board continues to hold office until the appointment and qualification of a successor. The governor may remove a board member for cause.

3. Annually the members shall elect a chairman from among the members. At least two of the members who are appraiser members must be present in order for a quorum to exist. The members are entitled to receive compensation for each day actually engaged in the service of the board and actual and necessary traveling expenses at the rate allowed other state officials, paid from the fees collected by the board.

#### **43-23.3-03. Powers and duties of the board.**

1. The board, or the board's designated representative, shall:
  - a. Define apprentice appraiser, licensed appraiser, certified residential appraiser, and certified general appraiser; determine the type of educational experience, appraisal experience, and equivalent experience that meet the requirements of this chapter; establish application procedures; and establish standards for approval and disapproval of applications for permits.
  - b. Establish examination specifications for each category of licensed and certified appraiser and administer examinations.
  - c. Approve or disapprove applications for permits, issue pocket cards and permits to practice, and maintain a registry of the names and addresses of individuals holding permits.
  - d. Discipline permittees.
  - e. Hold meetings, hearings, and examinations in places and at times as the board designates and maintain records of board activities.
  - f. Adopt rules, pursuant to chapter 28-32, necessary to implement this chapter or carry out the requirements imposed by federal law.
  - g. Adopt rules that clearly and concisely establish the standards for approval and disapproval of applications for permits. The rules must include a requirement that an application disapproval clearly specify the basis for the disapproval.
  - h. Keep permittees informed of board activities, including providing notification of board member terms and any upcoming board vacancy; internet posting of meeting notices and minutes; and internet posting of proposed and final rule changes.
2. The board, or the board's designated representative, may:
  - a. Promote research and conduct studies relative to real estate appraising and sponsor educational activities.
  - b. Contract for services necessary to carry out this chapter.
3. The board, or the board's authorized representative, may investigate and gather evidence concerning alleged violations of the provisions of chapter 43-23.3 or the rules of the board. Board investigative files are exempt records as defined in subsection 5 of section 44-04-17.1, but a copy of the investigative file must be provided to a licensee if a complaint is filed against the licensee by the board.

#### **43-23.3-03.1. Public records exception.**

Documents obtained by the board as part of the licensing, investigation, or disciplinary process which are deemed confidential under the uniform standards of professional appraisal practices are exempt records as defined in subsection 5 of section 44-04-17.1.

#### **43-23.3-04. Permit required - Exemptions.**

Except as provided in this section, a person may not directly or indirectly engage in, advertise, conduct the business of, or act in any capacity as an apprentice, licensed, or certified appraiser without first obtaining a permit as provided in this chapter. An appraiser, apprenticed, licensed, or certified in another state may not engage in, advertise, conduct the business of, or act in any capacity as an appraiser in this state without first obtaining a temporary permit under

section 43-23.3-11 or a permit under section 43-23.3-04.1. This chapter does not apply to a licensed real estate broker or salesperson who, in the ordinary course of business, gives an opinion to a potential seller or third party as to the recommended listing price of real estate or an opinion to a potential purchaser or third party as to the recommended purchase price of real estate. However, the opinion as to the listing price or the purchase price may not be referred to as an appraisal. This chapter does not apply to a person who, in the ordinary course of business, gives an opinion of the value of real estate to that person's employer.

**43-23.3-04.1. Issuance of permits to applicants licensed or certified by another state.**

The board shall issue a permit to an applicant who is licensed or certified in good standing by another state if the other state's requirements to be licensed or certified are at least substantially equivalent to the requirements imposed by this state, and if grounds for denial of the application under section 43-23.3-18 do not exist. Within sixty days of filing a completed application, the board shall issue or deny the application and inform the applicant of the decision.

**43-23.3-05. Permit process.**

An individual who desires to engage in the practice of real estate appraisal shall apply for a permit on forms prescribed by the board and submit the required fee.

**43-23.3-06. Classes of permits.**

The board may issue apprentice, license, and certification permits for appraisers.

1. An apprentice appraiser must meet the minimum requirements established by the board for a permit. An apprentice appraiser may only assist a licensed or a certified appraiser in the performance of an appraisal assignment.
2. A licensed appraiser must meet the minimum requirements established by the board for a permit.
3. A certified residential appraiser must meet the minimum requirements established by the board for a permit. The board's requirements may not exceed the appraisal foundation qualification criteria. The board shall review periodically the appraisal foundation appraisal qualification criteria to ensure the board's rules do not exceed the appraisal qualification criteria.
4. A certified general appraiser must meet the minimum requirements established by the board for a permit. The board's requirements may not exceed the appraisal foundation qualification criteria. The board shall review periodically the appraisal foundation appraisal qualification criteria to ensure the board's rules do not exceed the appraisal qualification criteria.

**43-23.3-07. Examination requirement.**

The board shall issue a permit to practice as a licensed, certified residential, or certified general appraiser to an individual who has demonstrated the following qualifications through a written examination process:

1. Knowledge of technical terms used in or related to real estate appraising, appraisal report writing, and economic concepts relating to real estate.
2. Understanding of the principles of land economics, appraisal processes, and of problems likely to be encountered in gathering, interpreting, and processing of data in carrying out appraisal disciplines.
3. Understanding of the uniform standards of professional appraisal practices.
4. Knowledge of theories of depreciation, cost estimating, methods of capitalization, the mathematics of real estate appraisal, and other principles and procedures determined by the board to be appropriate for the appreciable classification of permit.
5. Basic understanding of real estate law.
6. Understanding of the types of misconduct for which disciplinary proceedings may be initiated against an appraiser.

#### **43-23.3-08. Application prerequisites.**

An applicant for a permit as an apprentice, licensed, certified residential, or certified general appraiser must successfully complete the education requirements established by the board.

#### **43-23.3-09. Appraisal experience.**

The board may issue a permit to practice as a licensed, certified residential, or certified general appraiser to an individual who possesses the minimum experience requirements established by the board. The board shall require an applicant to furnish, under oath, a detailed listing of the appraisal reports or file memoranda for which appraisal experience is claimed by the applicant. Upon request, the applicant shall provide to the board copies of appraisal reports or other documents that the applicant has assisted in preparing.

#### **43-23.3-10. Expiration of permit.**

Permits expire on December thirty-first of each year. The expiration date of the permit must appear on the permit and no other notice of its expiration need be given to the permittee.

#### **43-23.3-11. Temporary permit.**

1. The board may issue a temporary permit to an applicant who is apprenticed, licensed, or certified in good standing by another state. The board may deny a temporary permit to an applicant whose permit, apprenticeship, license, or certification was revoked, suspended, or otherwise subjected to discipline by any state or jurisdiction.
2. An applicant for a temporary permit shall file with the board a designation in writing which appoints the chairman of the board to act as the applicant's licensed agent upon whom all judicial and other process or legal notices directed to the applicant may be served. Copies of the appointment, certified by the chairman of the board, may be received in evidence in any proceeding and must be given the same effect as the original. In the written designation, the applicant shall agree that any lawful process against that individual which is served upon the agent is of the same legal force as if served upon the applicant, and that the authority of the agent continues in force as long as any liability of the applicant remains outstanding in this state. Upon the receipt of any process or notice, the chairman shall mail a copy of the process or notice by certified mail, return receipt requested, to the last-known business address of the applicant.
3. The board may issue a temporary permit to an applicant if the applicant agrees in writing to abide by this chapter and to submit to the jurisdiction of the board.
4. The board shall issue a temporary permit to an applicant who has complied with this section. The board may require the applicant to pay a fee. The board shall determine the amount of the fee and the duration of the temporary permit.

#### **43-23.3-12. Permit renewal.**

To renew a permit, the permittee shall apply to the board and pay the required fee. With the application for renewal, the appraiser shall present evidence of having completed the continuing education requirements for renewal. The board may adopt rules to allow permits to be assigned to inactive status. Permits assigned to inactive status are subject to disciplinary action and activation of an inactive permit may be subject to a denial by the board.

#### **43-23.3-13. Principal place of business.**

A permittee shall notify the board of the address of the permittee's place of business. Within twenty days of a change in the address of the place of business, the permittee shall give written notification of the change to the board and pay the change of address fee.

#### **43-23.3-14. Permit number displayed with signature.**

A permittee shall place the permittee's permit number adjacent to the permittee's signature on an appraisal report, contract, or other writing used by the permittee in conducting appraisal activities.

#### **43-23.3-15. Use of designation.**

The terms "apprentice appraiser", "licensed appraiser", "certified residential appraiser", "certified general appraiser", and "certified appraiser" may only be used to refer to an individual who holds a permit under this chapter and may not be used following or immediately in connection with the name or signature of any other individual or person or in a manner that might be interpreted as referring to any other individual or person other than the individual who holds the permit. This section does not prohibit a licensed or certified appraiser from signing an appraisal report on behalf of a corporation, limited liability company, partnership, or firm.

#### **43-23.3-16. Action for fee.**

No claim for relief may be instituted in any court of this state for compensation for an act done or service rendered as an apprentice, licensed, or certified appraiser unless the appraiser held a permit to practice under this chapter at the time of offering to perform the act or service or procuring a promise to contract for the payment of compensation for a contemplated act or service as an apprentice, licensed, or certified appraiser.

#### **43-23.3-17. Retention of records.**

An apprentice, licensed, or certified appraiser shall retain, for at least five years, originals or copies of all written contracts engaging the permittee's services for appraisal work and all reports and supporting data assembled and formulated by the permittee in preparing the reports. The period for retention of records applies to each engagement of the services of the permittee and commences upon the date of the submission of the appraisal to the client unless, within that period, the permittee is notified that the appraisal report is involved in litigation, in which event the period for the retention of records commences on the date of the final disposition of the litigation. The permittee shall make available for inspection and copying by the board on reasonable notice all records required to be maintained.

#### **43-23.3-18. Standards of professional appraisal practice.**

An apprentice, licensed, or certified appraiser shall comply with the standards of professional appraisal practice and ethical rules specified by the uniform standards of professional appraisal practice and all other standards and ethical requirements adopted by the appraisal foundation.

#### **43-23.3-19. Continuing education.**

The board shall adopt rules for the implementation of continuing education requirements to assure that permit renewal applicants have current knowledge of appraisal theories, practices, and techniques that provide a high degree of service and protection to the public. The rules must establish:

1. Policies and procedures for obtaining board approval of courses of instruction.
2. Standards, policies, and procedures to be applied by the board in evaluating an applicant's claims of equivalency.
3. Standards, monitoring methods, and systems for recording attendance by course sponsors.

#### **43-23.3-20. Fees.**

The board may charge apprentice, licensed, and certified permittees and educational providers or promoters reasonable fees to help offset costs of operating the board. The board shall establish the charges by rule.

#### **43-23.3-21. Disposition of fees.**

The board, or its designated representative, shall deposit all fees collected by the board in a separate account. Disbursements from the account may not exceed the moneys credited to it. The board's designated representative shall review and pay appropriate charges against the account for services provided to the board.

#### **43-23.3-22. Disciplinary proceedings.**

1. The board may deny an application for, refuse to renew, suspend, or revoke a permit, impose a monetary fine, or issue a letter of reprimand, when the applicant or permittee has:
  - a. Procured or attempted to procure a permit by knowingly making a false statement, submitting false information, refusing to provide complete information in response to a question in an application for certification, or through fraud or misrepresentation.
  - b. Failed to meet the minimum qualifications established under this chapter.
  - c. Paid money other than provided for by this chapter to any member or employee of the board to procure a permit.
  - d. Been convicted, including a conviction based upon a plea of guilty or nolo contendere, of a felony or of a crime that is substantially related to the qualifications, functions, and duties of a person developing and communicating appraisals to others.
  - e. Performed an act involving dishonesty, fraud, or misrepresentation with the intent to benefit substantially that person or another person, or with the intent to injure substantially another person.
  - f. Violated any standard for the development or communication of appraisals as provided in this chapter.
  - g. Failed or refused without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report, or communicating an appraisal.
  - h. Acted with gross negligence or incompetence in developing an appraisal, in preparing an appraisal report, or in communicating an appraisal.
  - i. Willfully violated this chapter or rules of the board.
  - j. Accepted an appraisal assignment when the employment is contingent upon the reporting of a predetermined estimate, analysis, or opinion, or if the fee is contingent upon the opinion, conclusion, or valuation reached, or upon the consequences resulting from the appraisal assignment.
  - k. Violated the confidential nature of governmental records to which the person gained access through employment or engagement as an appraiser by a governmental agency.
  - l. Had entry of a civil judgment against the person on grounds of fraud, misrepresentation, or deceit in the making of an appraisal.
2. In a disciplinary proceeding based upon a civil judgment, the permittee must be afforded an opportunity to present matters in mitigation and extenuation, but may not collaterally attack the civil judgment.
3. A signed or unsigned allegation from the public is not a complaint until the board determines there is reasonable cause to initiate a disciplinary proceeding against one or more applicants or permittees.

#### **43-23.3-23. Penalties.**

A person acting or purporting to act as an apprentice, licensed, or certified appraiser without holding a permit to practice is guilty of a class A misdemeanor. An appraiser, apprenticed, licensed, or certified in another state, who engages in, advertises, conducts the business of, or acts in any capacity as an appraiser without first obtaining a temporary permit is guilty of a class A misdemeanor. In addition to any other penalty, a person receiving any money or other compensation in violation of this chapter is subject to a penalty of not less than the amount of the sum of money received and not more than three times the sum in the discretion of the court.

#### **43-23.3-24. Criminal history record checks.**

The board shall require an applicant for a permit, under sections 43-23.3-04.1, 43-23.3-07, 43-23.3-08, and 43-23.3-09, and may require a permittee to submit to a statewide and nationwide criminal history record check. The nationwide criminal history record check must be

conducted in the manner provided in section 12-60-24. All costs associated with obtaining a background check are the responsibility of the applicant or permittee.