

**OPINION  
72-286**

May 1, 1972 (OPINION)

Mr. Dennis D. Schulz  
Secretary-Treasurer  
North Dakota Real Estate Commission

RE: Real Estate - Brokers Licenses

This is in reply to your letter of April 11, 1972, requesting an opinion of this office with regard to the interpretation of Section 43-23-14 of the 1971 supplement to the North Dakota Century Code.

As you indicate this statute provides:

"43-23-14. FUND HANDLING BY BROKER.--Every real estate broker or mortgage broker as herein defined shall remit immediately to his principal all money received by him belonging to his principal, except where by the terms of his employment he is permitted to retain possession of such money until the final settlement and consummation of such transaction, in which event he shall immediately deposit said money in a bank in a special or trust account and such money shall not be used by such real estate broker or mortgage broker, except in connection with said transaction.

You indicate that it has been brought to your attention that a number of real estate brokers have been delegating their authority to sign checks withdrawing funds from the broker's trust account to a salesman, secretary, or office manager, when the broker is absent from the office due to illness, vacation, business trip, or some other cause. The brokers content that by not being able to delegate this authority in times of absence they are causing undue hardship and inconvenience to their client by not being able to close a real estate transaction.

You indicate further that in the past your office has taken the position that as a general rule trustees must retain custody of trust funds and execute the trust themselves and not through an agent such as a secretary, salesman, or office manager. Furthermore, you have taken the position that only a broker may be a signatory on a trust account.

You state that the question upon which you desire an opinion is whether a broker as trustee of a trust account can delegate the right to withdraw funds from such an account through a person such as a salesman, secretary or office manager, or whether a broker as trustee of the trust account is the only person under the law authorized to draw from the trust fund account.

Title 59 of the North Dakota Century Code as amended to date, entitled "Trusts, Uses, and Powers" does enter the reposing of "confidence" in the trustee, the

"responsibility" of that position, and, of course, the fact that the trustee is in a position of "trust". However, the basic feature of a trust bank account is basically that the "trustee" of such bank account holds a bare legal title to such account for the benefit of the "cestui que trust" or "beneficiary". We find nothing in the trust or banking statutes that would prevent a trustee from utilizing the services of treasurer, comptrollers, salesmen, secretaries, managers or other agents in handling same. We are not, of course, suggesting that the trustee could or would thus escape personal liability and responsibility for misuse of the funds, or for a use not authorized by the trust purposes. Also, looking to the provisions of Chapter 43-23 of the North Dakota Century Code, and specifically the provisions of section 43-23-14 we find nothing therein that would make the issuance of checks on the trust account so specifically a part of the licensed activity, as to prohibit person other than a licensed broker to handle such account.

We are not, of course, suggesting that it is necessarily a good business practice for the broker to allow employees access to either his individual account or the type of trust account to which you refer, only that this practice is not prohibited by the statutes on the subject.