

**LETTER OPINION
2019-L-04**

June 26, 2019

Mr. Timothy R. Timian
Chair
Real Estate Appraiser Qualifications and Ethics Board
PO Box 1336
Bismarck, ND 58502-1336

Dear Mr. Timian:

Thank you for your letter asking whether a permit is required under N.D.C.C. § 43-23.3-04 to perform real estate appraisals in the state of North Dakota. For the reasons stated below, it is my opinion that a permit is required to perform real estate appraisals in the state of North Dakota.

ANALYSIS

There are several types of appraiser permits issued pursuant to N.D.C.C. ch. 43-23.3, including certified general appraisers, certified residential appraisers, and licensed appraisers. The scope of work and requirements for each class of permit is defined in N.D.A.C. title 101.

A licensed appraiser is allowed to “appraise noncomplex, one-to-four family residential properties that have a transaction value of up to one million dollars and complex one-to-four family residential properties that have a transaction value of up to two hundred fifty thousand dollars”¹ as well as “noncomplex, nonresidential properties, that have a transaction value of up to two hundred fifty thousand dollars.”² A certified residential appraiser may “appraise one-family to four-family residential properties without regard to value or complexity” as well as “noncomplex, nonresidential properties that have a transaction value of up to two hundred fifty thousand dollars.”³ A certified general

¹ N.D.A.C. § 101-02-02-05(2).

² *Id.*

³ N.D.A.C. § 101-02-02-05.1(2).

appraiser “may appraise all types of property.”⁴ The scopes of these permit classifications encompass appraisals for all types of properties.

Section 43-23.3-04, North Dakota Century Code, states:

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.

Emphasis added.

Between the various classes of permits detailed in N.D.C.C. ch. 43-23.3, the business of real estate appraisers is cumulatively defined as appraisals of all types of properties. Specifically, the business of a certified general appraiser is appraisal of “all types of property.” Given that N.D.C.C. § 43-23.3-04 mandates that a person may not “directly or indirectly . . . conduct the business of” an apprentice, licensed, or certified appraiser without first obtaining a permit, it is unambiguous that the statute requires a permit for appraising all types of property.⁵

⁴ N.D.A.C. § 101-02-02-06(2).

⁵ This conclusion is supported by other statutes in N.D.C.C. ch. 43-23.3. See also N.D.C.C. § 43-23.3-05 (“An individual who desires to engage in the practice of real estate appraisal shall apply for a permit. . . .”); N.D.C.C. § 43-23.3-23 (“A person acting . . . as an apprentice, licensed, or certified appraiser without holding a permit to practice is guilty of a class A misdemeanor.”).

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Pursuant to N.D.C.C. § 1-02-05, “[w]hen the wording of a statute is clear and free of all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.”⁶

Thus, under N.D.C.C. § 43-23.3-04, a permit is required to perform appraisals in North Dakota.

Sincerely,

Wayne Stenehjem
Attorney General

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.⁷

⁶ It is unnecessary to ascertain the legislative intent of a statute where the language is unambiguous. Even if legislative history was consulted, it would not aid in answering this question as the legislative history conflicts, as some testified the permit would be mandatory and other saying it would be voluntary. See S.B. 2259, 1991 N.D. Leg., specifically testimony from Claus Lemke, Joe Ibach, and David Campbell given in numerous hearings on this bill.

⁷ See *State ex rel. Johnson v. Baker*, 21 N.W.2d 355 (N.D. 1946).