

N.D.A.G. Letter to Schulz (Oct. 25, 1991)

October 25, 1991

Mr. Dennis D. Schulz
Secretary-Treasurer
North Dakota Real Estate Commission
Box 727
Bismarck, ND 58502

Dear Mr. Schulz:

Thank you for your October 17, 1991, letter requesting an opinion as to whether the real estate trust account committee established under N.D.C.C. ch. 43-23.4, as enacted by the 1991 Legislative Assembly, holds a beneficial interest in the real estate trust accounts. According to your letter, an opinion from this office is required by the Federal Reserve Board pursuant to a Federal Reserve Board staff opinion issued on November 5, 1984 (1 Fed. Res. Reg. Serv. 2-590.19 (1984)).

N.D.C.C. § 43-23.4-02, as adopted by the 1991 Legislative Assembly, sets forth the powers and duties of the real estate trust account committee. Subsection 1 of that section requires the real estate trust account committee to implement and administer an interest on a broker trust account program. Subsection 2 of that section provides, in part:

The committee is the sole recipient of the interest or dividends paid to the North Dakota association of realtors from real estate interest bearing trust accounts under the broker trust account program. . . .

Based upon my examination of N.D.C.C. § 43-23.4-02, it is my opinion that the real estate trust account committee holds the beneficial interest in the interest income earned on real estate interest-bearing accounts under the broker trust account program because it has the exclusive right to the interest on the funds maintained in the program.

Sincerely,

Nicholas J. Spaeth

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