

AN ACT  
RELATING TO REAL ESTATE LICENSES; CHANGING CERTAIN  
PROVISIONS FOR LICENSING, FEES AND MISCONDUCT OF BROKERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 61-29-1 NMSA 1978 (being Laws 1959, Chapter 226, Section 1, as amended) is amended to read:

"61-29-1. PROHIBITION.--It is unlawful for a person to engage in the business, act in the capacity of, advertise or display in any manner or otherwise assume to engage in the business of, or act as, a broker or real estate salesperson within this state without a license issued by the commission. A person who engages in the business or acts in the capacity of a broker or real estate salesperson in this state, except as otherwise provided in Section 61-29-2 NMSA 1978, with or without a New Mexico license, has thereby submitted to the jurisdiction of the state and to the administrative jurisdiction of the commission and is subject to all penalties and remedies available for a violation of any provision of Chapter 61, Article 29 NMSA 1978."

Section 2. Section 61-29-5 NMSA 1978 (being Laws 1959, Chapter 226, Section 4) is amended to read:

"61-29-5. ORGANIZATION OF COMMISSION.--The commission shall organize by electing a president, vice president and secretary from its members. A majority of the commission shall constitute a quorum and may exercise all powers and

duties devolving upon it and do all things necessary to carry into effect the provisions of Chapter 61, Article 29 NMSA 1978. The secretary of the commission shall keep a record of its proceedings, a register of persons licensed as real estate brokers and as real estate salespersons, showing the name, place of business of each and the date and number of his or her certificate, and a record of all licenses or certificates issued, refused, removed, suspended or revoked. This record shall be open to public inspection at all reasonable times."

Section 3. Section 61-29-8 NMSA 1978 (being Laws 1959, Chapter 226, Section 7, as amended) is amended to read:

"61-29-8. LICENSE FEES--DISPOSITION.--

A. The following fees shall be established and charged by the commission and paid into the real estate commission fund:

(1) for each examination, a fee not to exceed ninety-five dollars (\$95.00);

(2) for each broker's license issued, a fee not to exceed one hundred eighty dollars (\$180) and for each renewal thereof, a fee not to exceed one hundred eighty dollars (\$180);

(3) for each salesperson's license issued, a fee not to exceed one hundred eighty dollars (\$180) and for each renewal thereof, a fee not to exceed one hundred eighty dollars (\$180);

(4) subject to the provisions of Paragraph (10) of this subsection, for each change of place of business or change of employer or contractual associate, a fee not to exceed twenty dollars (\$20.00);

(5) for each duplicate license, where the license is lost or destroyed and affidavit is made thereof, a fee not to exceed twenty dollars (\$20.00);

(6) for each license history, a fee not to exceed twenty-five dollars (\$25.00);

(7) for copying of documents by the commission, a fee not to exceed one dollar (\$1.00) per copy;

(8) for each license law and rules and regulations booklet, a fee not to exceed ten dollars (\$10.00) per booklet;

(9) for each hard copy or electronic list of licensed real estate brokers and salespersons, a fee not to exceed twenty dollars (\$20.00); and

(10) when a license must be reissued for a salesperson because of change of address of the broker's office, death of the licensed broker when a successor licensed broker is replacing the decedent and the salesperson remains in the office or because of a change of name of the office or the entity of the licensed broker, the licensed broker or successor licensed broker as the case may be shall pay to the commission as the affected salesperson's license reissue fee an amount not to exceed twenty dollars

(\$20.00); but if there are eleven or more affected salespersons in the licensed broker's office, the total fee paid to effect reissuance of all of those licenses shall not exceed two hundred dollars (\$200).

B. All fees set by the commission shall be set by rule and only after all requirements have been met as prescribed by Chapter 61, Article 29 NMSA 1978. Any changes or amendments to the rules shall be filed in accordance with the provisions of the State Rules Act.

C. The commission shall deposit all money received by it from fees in accordance with the provisions of Chapter 61, Article 29 NMSA 1978 with the state treasurer, who shall keep that money in a separate fund to be known as the "real estate commission fund", and money so deposited in that fund is appropriated for the purpose of carrying out the provisions of Chapter 61, Article 29 NMSA 1978 or to maintain the real estate recovery fund as required by the Real Estate Recovery Fund Act and shall be paid out of the fund upon the vouchers of the executive secretary of the commission or his designee; provided that the total fees and charges collected and paid into the state treasury and any money so deposited shall be expended only for the purposes authorized by Chapter 61, Article 29 NMSA 1978.

D. The commission shall by rule provide for a proportionate refund of the license issuance fee or the

license renewal fee if the license is issued or renewed for a period of three years pursuant to Section 61-29-11 NMSA 1978 and is terminated with more than one year remaining."

Section 4. Section 61-29-9 NMSA 1978 (being Laws 1959, Chapter 226, Section 8, as amended) is amended to read:

"61-29-9. QUALIFICATIONS FOR LICENSE. --

A. Licenses shall be granted only to persons who are deemed by the commission to be of good repute and competent to transact the business of a real estate broker or salesperson in a manner that safeguards the interests of the public.

B. An applicant for a broker's license shall be a legal resident of the United States, have reached the age of majority and, except as provided in Section 61-29-14 NMSA 1978, be a resident of New Mexico. Each applicant for a broker's license shall have passed the real estate examination approved by the commission and shall:

(1) have performed actively as a real estate salesperson for at least twenty-four months out of the preceding thirty-six months immediately prior to filing application and furnish the commission a certificate that he has completed successfully a broker basics course approved by the commission;

(2) furnish the commission a certificate that he has completed successfully one hundred eighty classroom hours of instruction in basic real estate courses

approved by the commission;

(3) furnish the commission a certificate that he is a duly licensed real estate broker in good standing in another state, providing he has completed successfully ninety classroom hours of instruction in basic real estate courses approved by the commission, thirty hours of which shall have been a broker basics course; or

(4) furnish the commission satisfactory proof of his equivalent experience in an activity closely related to or associated with real estate and furnish the commission a certificate that he has completed successfully ninety classroom hours of instruction in basic real estate courses approved by the commission, thirty hours of which shall have been a broker basics course.

C. Each applicant for a salesperson's license shall be a legal resident of the United States, have reached the age of majority, have passed the real estate examination approved by the commission and furnish the commission a certificate that he has completed successfully sixty classroom hours of instruction in basic real estate courses approved by the commission.

D. The commission shall require the information it deems necessary from every applicant to determine his honesty, trustworthiness and competency. Corporations, partnerships or associations may hold a broker's license issued in the name of the corporation, partnership or

association, provided at least one member of the partnership or association or one officer or employee of a corporation who actively engages in the real estate business first secures a broker's license. The license shall be issued in the name of the corporation, partnership or association, naming the partner, associate, officer or employee as qualifying broker for the corporation, partnership or association. "

Section 5. Section 61-29-10 NMSA 1978 (being Laws 1959, Chapter 226, Section 9, as amended) is amended to read:

"61-29-10. APPLICATION FOR LICENSE AND EXAMINATION. --

A. All applications for licenses to act as real estate brokers and real estate salespersons shall be made in writing to the commission and shall contain such data and information as may be required upon a form to be prescribed and furnished by the commission. The application shall be accompanied by:

(1) the recommendation of two reputable citizens who own real estate in the county in which the applicant resides, which recommendation shall certify that the applicant is of good moral character, honest and trustworthy; and

(2) the triennial license fee prescribed by the commission.

B. In addition to proof of honesty,

trustworthiness and good reputation, an applicant shall pass satisfactorily a written examination approved by the commission. The examination shall be given at the time and places within the state as the commission shall prescribe; however, the examination shall be given not less than two times during each calendar year. The examination shall include business ethics, writing, composition, arithmetic, elementary principles of land economics and appraisals, a general knowledge of the statutes of this state relating to deeds, mortgages, contracts of sale, agency and brokerage and the provisions of Chapter 61, Article 29 NMSA 1978.

C. No applicant is permitted to engage in the real estate business until he has satisfactorily passed the approved examination, complied with the other requirements of Chapter 61, Article 29 NMSA 1978, and until a license has been issued to him.

D. Notice of passing or failing to pass the examination shall be given by the commission to an applicant not later than three weeks following the date of the examination.

E. The commission may establish educational programs and procure qualified personnel, facilities and materials for the instruction of persons desiring to become brokers or salespersons or desiring to improve their proficiency as brokers or salespersons. The commission may inspect and accredit educational programs and courses of

study and may establish standards of accreditation for educational programs conducted in this state. The expenses incurred by the commission in activities authorized pursuant to this subsection shall not exceed the total revenues received and accumulated by the commission. "

Section 6. Section 61-29-10.3 NMSA 1978 (being Laws 1999, Chapter 127, Section 4) is amended to read:

"61-29-10.3. **BROKERAGE NONAGENCY RELATIONSHIPS.** --

A. For all regulated real estate transactions, a buyer, seller, landlord or tenant may enter into an express written agreement to become a client of a brokerage, without creating an agency relationship, and no agency duties will be imposed.

B. The commission shall promulgate rules governing the rights and responsibilities of clients and customers and the rights, responsibilities and duties of the brokerage in a nonagency relationship. All licensees will perform the duties of licensees as prescribed by the commission. "

Section 7. Section 61-29-11 NMSA 1978 (being Laws 1959, Chapter 226, Section 10, as amended) is amended to read:

"61-29-11. **ISSUANCE, RENEWAL AND SURRENDER OF LICENSES.** --

A. The commission shall issue to each qualified applicant a license in the form and size prescribed by the

commission.

B. The license shall show the name and address of the licensee. A real estate salesperson's license shall show the name of the broker by whom he is engaged. The license of the real estate salesperson shall be delivered or mailed to the broker by whom the real estate salesperson is engaged and shall be kept in the custody and control of that broker.

C. Every license shall be renewed every three years on or before the last day of the month following the licensee's month of birth. Upon written request for renewal by the licensee, the commission shall certify renewal of a license if there is no reason or condition that might warrant the refusal of the renewal of a license. The licensee shall provide proof of compliance with continuing education requirements and pay the renewal fee. If a licensee has not made application for renewal of license, furnished proof of compliance with continuing education requirements and paid the renewal fee by the license renewal date, the license shall expire. The commission may require a person whose license has expired to apply for a license as if he had not been previously licensed under Chapter 61, Article 29 NMSA 1978 and further require that he be reexamined. The commission shall require a person whose license has expired to pay when he applies for a license, in addition to any other fee, a late fee of one hundred dollars

(\$100). If during a period of one year from the date the license expires the person or his spouse is either absent from this state on active duty military service or the person is suffering from an illness or injury of such severity that the person is physically or mentally incapable of making application for a license, payment of the late fee and reexamination shall not be required by the commission if, within three months of the person's permanent return to this state or sufficient recovery from illness or injury to allow the person to make an application, the person makes application to the commission for a license. A copy of that person's or his spouse's military orders or a certificate from the applicant's physician shall accompany the application. A person excused by reason of active duty military service, illness or injury as provided for in this subsection may make application for a license without imposition of the late fee. All fees collected pursuant to this subsection shall be disposed of in accordance with the provisions of Section 61-29-8 NMSA 1978. The revocation of a broker's license automatically suspends every real estate salesperson's license granted to any person by virtue of association with the broker whose license has been revoked, pending a change of broker. Upon the naming of a new broker, the suspended license will be reactivated without charge if granted during the three-year renewal cycle.

D. Each resident licensed broker shall maintain a

fixed office within this state, which shall be so located as to conform with local regulations. Every office operated by a licensed broker shall have a licensed broker in charge who is a natural person. The license of the broker and each salesperson associated with that broker shall be prominently displayed in the office. The address of the office shall be designated in the broker's license, and no license issued shall authorize the licensee to transact real estate business at any other address. In case of removal from the designated address, the licensee shall make application to the commission before the removal or within ten days thereafter, designating the new location of his office and paying the required fee, whereupon the commission shall issue a license for the new location if the new location complies with the terms of Chapter 61, Article 29 NMSA 1978. A licensed broker shall maintain a sign on his office of such size and content as the commission prescribes. In making application for a license or for a change of address, the licensee shall verify that his office conforms with local regulations.

E. When a real estate salesperson is discharged or terminates his association or employment with broker with whom he is associated, it is the duty of that broker to deliver or mail to the commission that real estate salesperson's license within forty-eight hours. The commission shall hold the license on inactive status. It is

unlawful for a real estate salesperson to perform any of the acts authorized by Chapter 61, Article 29 NMSA 1978 either directly or indirectly under authority of an inactive license after his association has been terminated and his license as salesperson has been returned to the commission as provided in that article until the appropriate fee has been paid and the license has been reissued by the commission. "

Section 8. Section 61-29-12 NMSA 1978 (being Laws 1959, Chapter 226, Section 11, as amended) is amended to read:

"61-29-12. REFUSAL, SUSPENSION OR REVOCATION OF LICENSE FOR CAUSES ENUMERATED. --

A. The commission may refuse to issue or may suspend or revoke a license if the licensee has by false or fraudulent representations obtained a license or, in performing or attempting to perform any of the actions specified in Chapter 61, Article 29 NMSA 1978, an applicant or licensee has:

- (1) made a substantial misrepresentation;
- (2) pursued a continued and flagrant course of misrepresentation; made false promises through agents, salespersons, advertising or otherwise; or used any trade name or insignia of membership in any real estate organization of which the licensee is not a member;
- (3) paid or received a rebate, profit,

compensation or commission to or from any unlicensed person, except his principal or other party to the transaction, and then only with his principal's written consent;

(4) represented or attempted to represent a broker other than a broker with whom he is associated without the express knowledge and consent of that broker;

(5) failed, within a reasonable time, to account for or to remit any money coming into his possession that belongs to others, commingled funds of others with his own or failed to keep funds of others in an escrow or trustee account or failed to furnish legible copies of all listing and sales contracts to all parties executing them;

(6) been convicted in any court of competent jurisdiction of a felony or any offense involving moral turpitude;

(7) employed or compensated directly or indirectly a person for performing any of the acts regulated by Chapter 61, Article 29 NMSA 1978 who is not a licensed broker or licensed salesperson; provided, however, that a licensed broker may pay a commission to a licensed broker of another state; provided further that the nonresident broker shall not conduct in this state any of the negotiations for which a fee, compensation or commission is paid except in cooperation with a licensed broker of this state;

(8) failed, if a broker, to place as soon after receipt as is practicably possible, after securing

signatures of all parties to the transaction, any deposit money or other money received by him in a real estate transaction in a custodial, trust or escrow account maintained by him in a bank or savings and loan institution or title company authorized to do business in this state, in which the funds shall be kept until the transaction is consummated or otherwise terminated, at which time a full accounting of the funds shall be made by the broker. Records relative to the deposit, maintenance and withdrawal of the funds shall contain information as may be prescribed by the rules of the commission. Nothing in this paragraph prohibits a broker from depositing nontrust funds in an amount not to exceed the required minimum balance in each trust account so as to meet the minimum balance requirements of the bank necessary to maintain the account and avoid charges. The minimum balance deposit shall not be considered commingling and shall not be subject to levy, attachment or garnishment. This paragraph does not prohibit a broker from depositing any deposit money or other money received by him in a real estate transaction with another cooperating broker who shall in turn comply with this paragraph;

(9) failed, if a salesperson, to place as soon after receipt as is practicably possible in the custody of his broker, after securing signatures of all parties to the transaction, any deposit money or other money entrusted

to him by any person dealing with him as the representative of his broker;

(10) violated a provision of Chapter 61, Article 29 NMSA 1978 or a rule promulgated by the commission;

(11) committed an act, whether of the same or different character from that specified in this subsection, that is related to dealings as a broker or real estate salesperson and that constitutes or demonstrates bad faith, incompetency, untrustworthiness, impropriety, fraud, dishonesty, negligence or any unlawful act; or

(12) been the subject of disciplinary action as a licensee while licensed to practice real estate in another jurisdiction, territory or possession of the United States or another country.

B. An unlawful act or violation of Chapter 61, Article 29 NMSA 1978 by a real estate salesperson, employee, partner or associate of a licensed broker shall not be cause for the revocation of a license of the broker unless it appears to the satisfaction of the commission that the broker had guilty knowledge of the unlawful act or violation. "

Section 9. Section 61-29-14 NMSA 1978 (being Laws 1959, Chapter 226, Section 13, as amended) is amended to read:

"61-29-14. NONRESIDENT BROKERS. - -

A. An application for issuance of a license or renewal of an existing license shall be accepted from a nonresident applicant who is a broker licensed in another state only if the other state extends the privilege of reciprocal licensure to licensees in New Mexico. A qualifying nonresident may become a New Mexico nonresident licensee by conforming to all the conditions of Chapter 61, Article 29 NMSA 1978.

B. In its discretion, the commission may recognize, in lieu of the recommendations and certificates required to accompany an application for a license, the license issued to a nonresident in another state, provided the other state extends the privilege of licensure to licensees in New Mexico. The license shall be issued upon payment of the license fee, verification that the applicant has complied with his resident state's current education requirements, of which ninety classroom hours for a nonresident broker must be approved by the commission and thirty of which shall have been a broker basics course, and the filing by the applicant with the commission of a certified copy of the applicant's license issued by the other state, if the applicant:

(1) maintains an active place of business in the state by which he is licensed and meets the licensing requirements of Section 61-29-10 NMSA 1978; and

(2) files with the commission an

irrevocable consent that suits and actions may be commenced against him in the proper court of any county of this state in which a cause of action may arise or in which the plaintiff may reside, by the service of any process or pleadings authorized by the laws of this state on the commission, the consent stipulating and agreeing that such service of process or pleadings on the commission is as valid and binding as if personal service had been made upon the applicant in New Mexico. The instrument containing the consent shall be acknowledged and, if executed on behalf of a corporation or association, shall be accompanied by a certified copy of the resolution of the proper officers or managing board authorizing the executing officer to execute the instrument. Service of process or pleadings shall be served in duplicate upon the commission; one shall be filed in the office of the commission and the other immediately forwarded by registered mail to the main office of the applicant against which the process or pleadings are directed. "

Section 10. Section 61-29-15 NMSA 1978 (being Laws 1959, Chapter 226, Section 14) is amended to read:

"61-29-15. MAINTENANCE OF LIST OF LICENSEES. --The commission shall maintain a list of the names and addresses of all licensees licensed by it under the provisions of Chapter 61, Article 29 NMSA 1978, and of all persons whose license has been suspended or revoked within that year,

together with such other information relative to the enforcement of the provisions of Chapter 61, Article 29 NMSA 1978 as it may deem of interest to the public. The commission shall also maintain a statement of all funds received and a statement of all disbursements, and copies of the statements shall be mailed by the commission to any person in this state upon request. "

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Section 11. A new section of Chapter 61, Article 29 NMSA 1978 is enacted to read:

"UNLICENSED ACTIVITY-- CIVIL PENALTY. --The commission may impose a civil penalty in an amount not to exceed one thousand dollars (\$1,000) for each violation and assess administrative costs for any investigation and administrative or other proceedings against any person who is found, through a court or administrative proceeding, to have acted without a license in violation of Chapter 61, Article 29 NMSA 1978. "

Section 12. A new section of Chapter 61, Article 29 NMSA 1978 is enacted to read:

"REGULATION AND LICENSING DEPARTMENT-- ADMINISTRATIVELY ATTACHED. --The commission is administratively attached to the regulation and licensing department. "

Section 13. EFFECTIVE DATE. --The effective date of the provisions of this act is July 1, 2001. \_\_\_\_\_