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SENATE BILL 507

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Mark Boitano

AN ACT

RELATING TO REAL ESTATE LICENSES; CHANGING CERTAIN PROVISIONS  
FOR LICENSING; ELIMINATING THE SALESPERSON CATEGORY OF REAL  
ESTATE LICENSES.

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 qualifying broker or [~~real-estate  
salesperson~~] associate broker within this state without a  
license issued by the commission. A person who engages in the  
business or acts in the capacity of a qualifying broker or  
[~~real-estate-salesperson~~] associate broker in this state,

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1 except as otherwise provided in Section 61-29-2 NMSA 1978, with  
2 or without a New Mexico license, has thereby submitted to the  
3 jurisdiction of the state and to the administrative  
4 jurisdiction of the commission and is subject to all penalties  
5 and remedies available for a violation of any provision of  
6 Chapter 61, Article 29 NMSA 1978. "

7 Section 2. Section 61-29-2 NMSA 1978 (being Laws 1999,  
8 Chapter 127, Section 1) is amended to read:

9 "61-29-2. DEFINITIONS AND EXCEPTIONS. --

10 A. As used in Chapter 61, Article 29 NMSA 1978:

11 (1) "agency relationship" or "brokerage  
12 relationship" means the legal or ~~[contractural]~~ contractual  
13 relationship between a person and a brokerage in a real estate  
14 transaction subject to the jurisdiction of the commission;

15 ~~[(2) "broker" or "qualifying broker" means a~~  
16 ~~person who for compensation or other consideration from~~  
17 ~~another;~~

18 ~~(a) lists, sells or offers to sell real~~  
19 ~~estate; buys or offers to buy real estate; or negotiates the~~  
20 ~~purchase, sale or exchange of real estate or options on real~~  
21 ~~estate;~~

22 ~~(b) leases, rents or auctions or offers~~  
23 ~~to lease, rent or auction real estate;~~

24 ~~(c) advertises or holds himself out as~~  
25 ~~being engaged in the business of buying, selling, exchanging,~~

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1 ~~renting, leasing, auctioning or dealing with options on real~~  
2 ~~estate for others as a whole or partial vocation; or~~

3 ~~(d) engages in the business of charging~~  
4 ~~an advance fee or contracting for collection of a fee in~~  
5 ~~connection with a contract under which he undertakes primarily~~  
6 ~~to promote the sale of real estate through its listing in a~~  
7 ~~publication issued primarily for that purpose or for the~~  
8 ~~purpose of referral of information concerning real estate to~~  
9 ~~brokers;]~~

10 (2) "associate broker" means a person who for  
11 compensation or other consideration is associated with or  
12 engaged under contract by a qualifying broker to participate in  
13 an activity described in Subparagraphs (a) through (d) of  
14 Paragraph (10) of this subsection;

15 (3) "brokerage" means a licensed qualifying  
16 broker, the licensed real estate business represented by the  
17 broker and its affiliated licensees;

18 (4) "client" means a buyer, seller, landlord  
19 or tenant who has entered into an express written agreement  
20 with a brokerage for real estate services subject to the  
21 jurisdiction of the commission;

22 (5) "commission" means the New Mexico real  
23 estate commission [~~created pursuant to Section 61-29-4 NMSA~~  
24 ~~1978~~];

25 (6) "customer" means a buyer, seller, landlord

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1 or tenant who uses real estate services without entering into  
2 an express written agreement with a brokerage subject to the  
3 jurisdiction of the commission;

4 (7) "license" means a ~~[real estate]~~ qualifying  
5 broker's license or associate broker's license issued by the  
6 commission;

7 (8) "licensee" means ~~[anyone holding]~~ a person  
8 who holds a ~~[valid real estate]~~ license ~~[subject to the~~  
9 ~~jurisdiction of the commission];~~

10 (9) "nonagent" means a brokerage and its  
11 licensees providing real estate services to either clients by  
12 means of an express written agreement or to customers without  
13 an express written agreement;

14 (10) "qualifying broker" means a person who:

15 (a) for compensation or other  
16 consideration from another, lists, sells or offers to sell real  
17 estate; buys or offers to buy real estate; or negotiates the  
18 purchase, sale or exchange of real estate or options on real  
19 estate;

20 (b) for compensation or other  
21 consideration from another, leases, rents or auctions or offers  
22 to lease, rent or auction real estate;

23 (c) advertises or holds himself out as  
24 being engaged in the business of buying, selling, exchanging,  
25 renting, leasing, auctioning or dealing with options on real

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1 estate for others as a whole or partial vocation;

2 (d) engages in the business of charging  
3 an advance fee or contracting for collection of a fee in  
4 connection with a contract under which he undertakes primarily  
5 to promote the sale of real estate through its listing in a  
6 publication issued primarily for that purpose or for the  
7 purpose of referral of information concerning real estate to  
8 brokers;

9 (e) has been licensed and actively  
10 engaged in the real estate business as an associate broker or  
11 salesperson for at least two years;

12 (f) has qualified as an individual  
13 proprietorship, corporation, partnership or association to do  
14 business as a real estate brokerage in the state of New Mexico,  
15 or is a qualifying broker employed by the owner of a real  
16 estate business;

17 (g) is responsible for all activity  
18 within a real estate office or branch office;

19 (h) is responsible for the supervision  
20 of any associate broker who is licensed with him transacting  
21 real estate business described in this section;

22 (i) is responsible for trust accounts  
23 and trust account records; and

24 (j) assures compliance with all  
25 licensing laws and rules pertaining to office location and

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1 advertising; and

2 [~~(10)~~] (11) "real estate" means land,  
3 improvements, leaseholds and other interests in real property  
4 that are less than a fee simple ownership interest, whether  
5 tangible or intangible [~~and~~

6 ~~(11) "real estate salesperson" means a person~~  
7 ~~who for compensation or other valuable consideration is~~  
8 ~~associated with or engaged under contract by a broker to~~  
9 ~~participate in an activity described in Subparagraphs (a)~~  
10 ~~through (d) of Paragraph (2) of this subsection or to carry on~~  
11 ~~the broker's business as a whole or partial vocation].~~

12 B. A single act of a person in performing or  
13 attempting to perform an activity described in Subparagraphs  
14 (a) through [~~(d)~~] (j) of Paragraph [~~(2)~~] (10) of Subsection A  
15 of this section makes the person a qualifying broker. A single  
16 act of a person in performing or attempting to perform an  
17 activity described in Paragraph [~~(11)~~] (2) of Subsection A of  
18 this section makes the person [~~a real estate salesperson~~] an  
19 associate broker.

20 C. The provisions of Chapter 61, Article 29 NMSA  
21 1978 do not apply to:

22 (1) a person who as owner or lessor performs  
23 any of the activities included in this section with reference  
24 to property owned or leased by him, the employees of the owner  
25 or lessor or the employees of a broker acting on behalf of the

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1 owner or lessor, with respect to the property owned or leased,  
2 if the acts are performed in the regular course of or incident  
3 to the management of the property and the investments, except  
4 [where] when the sale or offering for sale or the lease or  
5 offering for lease of the property constitutes a subdivision  
6 containing one hundred or more parcels;

7 (2) isolated or sporadic transactions not  
8 exceeding two transactions annually in which a person acts as  
9 attorney-in-fact under a duly executed power of attorney  
10 delivered by an owner authorizing the person to finally  
11 consummate and to perform under any contract the sale, leasing  
12 or exchange of real estate on behalf of the owner; and the  
13 owner or attorney-in-fact has not used a power of attorney for  
14 the purpose of evading the provisions of Chapter 61, Article 29  
15 NMSA 1978;

16 (3) transactions in which a person acts as  
17 attorney-in-fact under a duly executed power of attorney  
18 delivered by an owner related to the attorney-in-fact within  
19 the fourth degree of consanguinity or closer, authorizing the  
20 person to finally consummate and to perform under any contract  
21 for the sale, leasing or exchange of real estate on behalf of  
22 the owner;

23 (4) the services rendered by an attorney at  
24 law in the performance of his duties as an attorney at law;

25 (5) a person acting in the capacity of a

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1 receiver, trustee in bankruptcy, administrator or executor, a  
2 person selling real estate pursuant to an order of any court or  
3 a trustee acting under a trust agreement, deed of trust or will  
4 or the regular salaried employee of a trustee;

5 (6) the activities of a salaried employee of a  
6 governmental agency acting within the scope of his employment;  
7 or

8 (7) persons who deal exclusively in mineral  
9 leases or the sale or purchase of mineral rights or royalties  
10 in any case in which the fee to the land or the surface rights  
11 are in no way involved in the transaction. "

12 Section 3. Section 61-29-5 NMSA 1978 (being Laws 1959,  
13 Chapter 226, Section 4, as amended) is amended to read:

14 "61-29-5. ORGANIZATION OF COMMISSION. --The commission  
15 shall organize by electing a president, vice president and  
16 secretary from its members. A majority of the commission shall  
17 constitute a quorum and may exercise all powers and duties  
18 devolving upon it and do all things necessary to carry into  
19 effect the provisions of Chapter 61, Article 29 NMSA 1978. The  
20 secretary of the commission shall keep a record of its  
21 proceedings, a register of persons licensed as [~~real estate~~]  
22 qualifying brokers and as [~~real estate salespersons~~] associate  
23 brokers, showing the name, place of business of each and the  
24 date and number of his or her certificate, and a record of all  
25 licenses or certificates issued, refused, removed, suspended or

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1 revoked. This record shall be open to public inspection at all  
2 reasonable times."

3 Section 4. Section 61-29-8 NMSA 1978 (being Laws 1959,  
4 Chapter 226, Section 7, as amended) is amended to read:

5 "61-29-8. LICENSE FEES--DISPOSITION. --

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

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

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

15 (3) for each [~~salesperson's~~] associate  
16 broker's license issued, a fee not to exceed one hundred eighty  
17 dollars (\$180) and for each renewal thereof, a fee not to  
18 exceed one hundred eighty dollars (\$180);

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

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

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

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

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

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

11 (10) when a license must be reissued for [a  
12 ~~salesperson~~] an associate broker because of change of address  
13 of the qualifying broker's office, death of the [~~licensed~~]  
14 qualifying broker when a successor [~~licensed~~] qualifying broker  
15 is replacing the decedent and the [~~salesperson~~] associate  
16 broker remains in the office or because of a change of name of  
17 the office or the entity of the [~~licensed~~] qualifying broker,  
18 the [~~licensed~~] qualifying broker or successor [~~licensed~~]  
19 qualifying broker, as the case may be, shall pay to the  
20 commission as the affected [~~salesperson's~~] associate broker's  
21 license reissue fee an amount not to exceed twenty dollars  
22 (\$20.00); but if there are eleven or more affected  
23 [~~salespersons~~] associate brokers in the [~~licensed~~] qualifying  
24 broker's office, the total fee paid to effect reissuance of all  
25 of those licenses shall not exceed two hundred dollars (\$200).

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

6           C. The commission shall deposit all money received  
7 by it from fees in accordance with the provisions of Chapter  
8 61, Article 29 NMSA 1978 with the state treasurer, who shall  
9 keep that money in a separate fund to be known as the "real  
10 estate commission fund", and money so deposited in that fund is  
11 appropriated for the purpose of carrying out the provisions of  
12 Chapter 61, Article 29 NMSA 1978 or to maintain the real estate  
13 recovery fund as required by the Real Estate Recovery Fund Act  
14 and shall be paid out of the real estate commission fund upon  
15 the vouchers of the executive secretary of the commission or  
16 his designee; provided that the total fees and charges  
17 collected and paid into the state treasury and any money so  
18 deposited shall be expended only for the purposes authorized by  
19 Chapter 61, Article 29 NMSA 1978.

20           D. The commission shall by rule provide for a  
21 proportionate refund of the license issuance fee or the license  
22 renewal fee if the license is issued or renewed for a period of  
23 three years pursuant to Section 61-29-11 NMSA 1978 and is  
24 terminated with more than one year remaining."

25           Section 5. Section 61-29-9 NMSA 1978 (being Laws 1959,  
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1 Chapter 226, Section 8, as amended) is amended to read:

2 "61-29-9. QUALIFICATIONS FOR LICENSE. --

3 A. Licenses shall be granted only to persons who  
4 are deemed by the commission to be of good repute and competent  
5 to transact the business of a ~~[real-estate]~~ qualifying broker  
6 or ~~[salesperson]~~ associate broker in a manner that safeguards  
7 the interests of the public.

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

14 (1) have ~~[performed]~~ been actively ~~[as-a]~~  
15 engaged in the real estate ~~[salesperson]~~ business as an  
16 associate broker or salesperson for at least ~~[twenty-four~~  
17 ~~months out of the preceding thirty-six months immediately prior~~  
18 ~~to filing application]~~ two years and furnish the commission a  
19 certificate that he has completed successfully a broker basics  
20 course approved by the commission;

21 ~~[(2) furnish the commission a certificate that~~  
22 ~~he has completed successfully one hundred eighty classroom~~  
23 ~~hours of instruction in basic real estate courses approved by~~  
24 ~~the commission;~~

25 ~~(3)]~~ (2) furnish the commission a certificate

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

6 [~~(4)~~] (3) furnish the commission satisfactory  
7 proof of his equivalent experience in an activity closely  
8 related to or associated with real estate and furnish the  
9 commission a certificate that he has completed successfully  
10 ninety classroom hours of instruction in basic real estate  
11 courses approved by the commission, thirty hours of which shall  
12 have been a broker basics course.

13 C. [~~Each~~] An applicant for [~~a salesperson's~~] an  
14 associate broker's license shall be a legal resident of the  
15 United States, have reached the age of majority, have passed  
16 the real estate examination approved by the commission and  
17 furnish the commission a certificate that he has completed  
18 successfully [~~sixty~~] ninety classroom hours of instruction in  
19 basic real estate courses approved by the commission.

20 D. The commission shall require the information it  
21 deems necessary from every applicant to determine his honesty,  
22 trustworthiness and competency. Corporations, partnerships or  
23 associations may hold a qualifying broker's license issued in  
24 the name of the corporation, partnership or association,  
25 [~~provided~~] if at least one member of the partnership or

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1 association or one officer or employee of a corporation who  
2 actively engages in the real estate business first secures a  
3 qualifying broker's license. The license shall be issued in  
4 the name of the corporation, partnership or association, naming  
5 the partner, associate, officer or employee as qualifying  
6 broker for the corporation, partnership or association. "

7 Section 6. Section 61-29-10 NMSA 1978 (being Laws 1959,  
8 Chapter 226, Section 9, as amended) is amended to read:

9 "61-29-10. APPLICATION FOR LICENSE AND EXAMINATION. --

10 A. [~~All applications for licenses to act as real~~  
11 ~~estate brokers and real estate salespersons~~] An application for  
12 a license shall be made in writing to the commission and shall  
13 contain such data and information as may be required upon a  
14 form to be prescribed and furnished by the commission. The  
15 application shall be accompanied by:

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

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

23 B. In addition to proof of honesty, trustworthiness  
24 and good reputation, an applicant shall pass satisfactorily a  
25 written examination approved by the commission. The

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1 examination shall be given at the time and places within the  
2 state as the commission shall prescribe; provided, however, the  
3 examination shall be given not less than two times during each  
4 calendar year. The examination shall include business ethics,  
5 writing, composition, arithmetic, elementary principles of land  
6 economics and appraisals, a general knowledge of the statutes  
7 of this state relating to deeds, mortgages, contracts of sale,  
8 agency and brokerage and the provisions of Chapter 61, Article  
9 29 NMSA 1978.

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

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

19 E. The commission may establish educational  
20 programs and procure qualified personnel, facilities and  
21 materials for the instruction of persons desiring to become  
22 qualifying brokers or [~~salespersons~~] associate brokers or  
23 desiring to improve their proficiency as qualifying brokers or  
24 [~~salespersons~~] associate brokers. The commission may inspect  
25 and accredit educational programs and courses of study and may

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

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

8 "61-29-11. ISSUANCE, RENEWAL AND SURRENDER OF  
9 LICENSES. --

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

13 B. The license shall show the name and address of  
14 the licensee. [~~A real estate salesperson's~~] An associate  
15 broker's license shall show the name of the qualifying broker  
16 by whom he is engaged. The license of the [~~real estate~~  
17 ~~salesperson~~] associate broker shall be delivered or mailed to  
18 the qualifying broker by whom the [~~real estate salesperson~~]  
19 associate broker is engaged and shall be kept in the custody  
20 and control of that qualifying broker.

21 C. [~~Every~~] A license shall be renewed every three  
22 years on or before the last day of the month following the  
23 licensee's month of birth. Upon written request for renewal by  
24 the licensee, the commission shall certify renewal of a license  
25 if there is no reason or condition that might warrant the

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1 refusal of the renewal of a license. The licensee shall  
2 provide proof of compliance with continuing education  
3 requirements and pay the renewal fee. If a licensee has not  
4 made application for renewal of license, furnished proof of  
5 compliance with continuing education requirements and paid the  
6 renewal fee by the license renewal date, the license shall  
7 expire. The commission may require a person whose license has  
8 expired to apply for a license as if he had not been previously  
9 licensed under Chapter 61, Article 29 NMSA 1978 and further  
10 require that he be reexamined. The commission shall require a  
11 person whose license has expired to pay when he applies for a  
12 license, in addition to any other fee, a late fee of one  
13 hundred dollars (\$100). If during a period of one year from  
14 the date the license expires the person or his spouse is either  
15 absent from this state on active duty military service or the  
16 person is suffering from an illness or injury of such severity  
17 that the person is physically or mentally incapable of making  
18 application for a license, payment of the late fee and  
19 reexamination shall not be required by the commission if,  
20 within three months of the person's permanent return to this  
21 state or sufficient recovery from illness or injury to allow  
22 the person to make an application, the person makes application  
23 to the commission for a license. A copy of that person's or  
24 his spouse's military orders or a certificate from the  
25 applicant's physician shall accompany the application. A

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1 person excused by reason of active duty military service,  
2 illness or injury as provided for in this subsection may make  
3 application for a license without imposition of the late fee.  
4 All fees collected pursuant to this subsection shall be  
5 disposed of in accordance with the provisions of Section  
6 61-29-8 NMSA 1978. The revocation of a qualifying broker's  
7 license automatically suspends every [~~real-estate~~  
8 ~~salesperson's~~] active license granted to any person by virtue  
9 of association with the qualifying broker whose license has  
10 been revoked, pending a change of broker. Upon the naming of a  
11 new qualifying broker, the suspended license will be  
12 reactivated without charge if granted during the three-year  
13 renewal cycle.

14 D. Each resident [~~licensed~~] qualifying broker shall  
15 maintain a fixed office within this state, which shall be so  
16 located as to conform with local regulations. Every office  
17 operated by a [~~licensed~~] qualifying broker shall have a  
18 [~~licensed~~] qualifying broker in charge who is a natural person.  
19 The license of the qualifying broker and each [~~salesperson~~]  
20 licensee associated with that broker shall be prominently  
21 displayed in the office. The address of the office shall be  
22 designated in the qualifying broker's license, and no license  
23 issued shall authorize the licensee to transact real estate  
24 business at any other address. In case of removal from the  
25 designated address, the licensee shall make application to the

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1 commission before the removal or within ten days thereafter,  
2 designating the new location of his office and paying the  
3 required fee, whereupon the commission shall issue a license  
4 for the new location if the new location complies with the  
5 terms of Chapter 61, Article 29 NMSA 1978. A [~~licensed~~]  
6 qualifying broker shall maintain a sign on his office of such  
7 size and content as the commission prescribes. In making  
8 application for a license or for a change of address, [~~the~~  
9 ~~licensee~~] a qualifying broker shall verify that his office  
10 conforms with local regulations.

11 E. When [~~a real estate salesperson~~] an associate  
12 broker is discharged or terminates his association or  
13 employment with the qualifying broker with whom he is  
14 associated, it is the duty of that qualifying broker to deliver  
15 or mail to the commission that [~~real estate salesperson's~~]  
16 person's license within forty-eight hours. The commission  
17 shall hold the license on inactive status. It is unlawful for  
18 [~~a real estate salesperson~~] an associate broker to perform any  
19 of the acts authorized by Chapter 61, Article 29 NMSA 1978  
20 either directly or indirectly under authority of an inactive  
21 license after his association has been terminated and his  
22 license [~~as salesperson~~] has been returned to the commission as  
23 provided in that article until the appropriate fee has been  
24 paid and the license has been reissued by the commission."

25 Section 8. Section 61-29-12 NMSA 1978 (being Laws 1959,

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1 Chapter 226, Section 11, as amended) is amended to read:

2 "61-29-12. REFUSAL, SUSPENSION OR REVOCATION OF LICENSE  
3 FOR CAUSES ENUMERATED. - -

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

9 (1) made a substantial misrepresentation;

10 (2) pursued a continued and flagrant course of  
11 misrepresentation; made false promises through agents,  
12 salespersons, advertising or otherwise; or used any trade name  
13 or insignia of membership in any real estate organization of  
14 which the licensee is not a member;

15 (3) paid or received a rebate, profit,  
16 compensation or commission to or from any unlicensed person,  
17 except his principal or other party to the transaction, and  
18 then only with his principal's written consent;

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

23 (5) failed, within a reasonable time, to  
24 account for or to remit any money coming into his possession  
25 that belongs to others, commingled funds of others with his own

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1 or failed to keep funds of others in an escrow or trustee  
2 account or failed to furnish legible copies of all listing and  
3 sales contracts to all parties executing them;

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

7 (7) employed or compensated directly or  
8 indirectly a person for performing any of the acts regulated by  
9 Chapter 61, Article 29 NMSA 1978 [~~who is not a licensed broker~~  
10 ~~or licensed salesperson~~] if that person is not a licensee;  
11 provided, however, that a [~~licensed~~] qualifying broker may pay  
12 a commission to a licensed broker of another state; provided  
13 further that the nonresident broker shall not conduct in this  
14 state any of the negotiations for which a fee, compensation or  
15 commission is paid except in cooperation with a [~~licensed~~]  
16 qualifying broker of this state;

17 (8) failed, if a qualifying broker, to place  
18 as soon after receipt as is practicably possible, after  
19 securing signatures of all parties to the transaction, any  
20 deposit money or other money received by him in a real estate  
21 transaction in a custodial, trust or escrow account, maintained  
22 by him in a bank or savings and loan institution or title  
23 company authorized to do business in this state, in which the  
24 funds shall be kept until the transaction is consummated or  
25 otherwise terminated, at which time a full accounting of the

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1 funds shall be made by the qualifying broker. Records relative  
2 to the deposit, maintenance and withdrawal of the funds shall  
3 contain information as may be prescribed by the rules of the  
4 commission. Nothing in this paragraph prohibits a qualifying  
5 broker from depositing nontrust funds in an amount not to  
6 exceed the required minimum balance in each trust account so as  
7 to meet the minimum balance requirements of the bank necessary  
8 to maintain the account and avoid charges. The minimum balance  
9 deposit shall not be considered commingling and shall not be  
10 subject to levy, attachment or garnishment. This paragraph  
11 does not prohibit a qualifying broker from depositing any  
12 deposit money or other money received by him in a real estate  
13 transaction with another cooperating broker who shall in turn  
14 comply with this paragraph;

15 (9) failed, if [~~a salesperson~~] an associate  
16 broker, to place as soon after receipt as is practicably  
17 possible in the custody of his qualifying broker, after  
18 securing signatures of all parties to the transaction, any  
19 deposit money or other money entrusted to him by any person  
20 dealing with him as the representative of his qualifying  
21 broker;

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

24 (11) committed an act, whether of the same or  
25 different character from that specified in this subsection,

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1 that is related to dealings as a [~~broker or real estate~~  
2 ~~salesperson~~] licensee and that constitutes or demonstrates bad  
3 faith, incompetency, untrustworthiness, impropriety, fraud,  
4 dishonesty, negligence or any unlawful act; or

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

9 B. An unlawful act or violation of Chapter 61,  
10 Article 29 NMSA 1978 by [~~a real estate salesperson~~] an  
11 associate broker, employee, partner or associate of a  
12 [~~licensed~~] qualifying broker shall not be cause for the  
13 revocation of a license of the qualifying broker unless it  
14 appears to the satisfaction of the commission that the  
15 qualifying broker had guilty knowledge of the unlawful act or  
16 violation. "

17 Section 9. Section 61-29-16 NMSA 1978 (being Laws 1959,  
18 Chapter 226, Section 15) is amended to read:

19 "61-29-16. SUIT BY [~~BROKER OR SALESMAN~~] LICENSEE. -- No  
20 action for the collection of commission or compensation earned  
21 by any person as a [~~real estate~~] qualifying broker or  
22 [~~salesman~~] associate broker required to be licensed under the  
23 provisions of [~~this act~~] Chapter 61, Article 29 NMSA 1978 shall  
24 be maintained in the courts of the state unless such person was  
25 [~~a duly licensed broker or salesman~~] licensed at the time the

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1 alleged cause of action arose. In any event, suit against a  
2 member of the public as distinguished from any person licensed  
3 [~~under this act~~] pursuant to Chapter 61, Article 29 NMSA 1978  
4 shall be maintained only in the name of the qualifying broker."

5 Section 10. Section 61-29-23 NMSA 1978 (being Laws 1980,  
6 Chapter 82, Section 4, as amended) is amended to read:

7 "61-29-23. JUDGMENT AGAINST [~~BROKER OR SALESPERSON~~]  
8 LICENSEE- - PETITION- - REQUIREMENTS- - RECOVERY LIMITATIONS. - -

9 A. When [~~any~~] an aggrieved person claims a  
10 pecuniary loss caused by a [~~state-licensed real-estate broker~~  
11 ~~or salesperson~~] licensee based upon fraud, knowing or willful  
12 misrepresentation or wrongful conversion of funds entrusted to  
13 him, which loss arose out of any transaction for which a [~~real-~~  
14 ~~estate broker's or salesperson's~~] license is required and arose  
15 out of or during the course of a transaction involving the  
16 sale, lease, exchange or other disposition of real estate,  
17 where the cause of action arose on or after July 1, 1980, that  
18 person may, within one year after obtaining a final judgment  
19 based upon fraud, knowing or willful misrepresentation or  
20 wrongful conversion of funds entrusted to him and the  
21 termination of all proceedings, including appeals in connection  
22 with the judgment, file a verified petition with the commission  
23 for payment from the real estate recovery fund for the actual  
24 damages included in the judgment and unpaid, but not more than  
25 ten thousand dollars (\$10,000) per judgment regardless of the

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1 number of persons aggrieved or parcels of real estate involved  
2 in the transaction. The aggregate amount recoverable by all  
3 claimants for losses caused by any one licensee shall not  
4 exceed thirty thousand dollars (\$30,000).

5 B. A copy of the petition shall be served upon the  
6 commission in the manner provided by law for service of a civil  
7 summons.

8 C. The commission shall conduct a hearing on the  
9 petition after service of the petition upon the commission. At  
10 the hearing, the petitioner shall [~~be required to~~] show that  
11 he:

12 (1) is not the spouse of the judgment debtor,  
13 the personal representative of the spouse or related to the  
14 third degree of consanguinity or affinity to the licensee whose  
15 conduct is alleged to have caused the loss;

16 (2) has complied with all the requirements of  
17 the Real Estate Recovery Fund Act;

18 (3) has obtained a judgment of the kind  
19 described in Subsection A of this section, the amount awarded  
20 and the amount owing at the date of the petition;

21 (4) has had execution issued upon the judgment  
22 and that the officer executing the writ has made a return  
23 showing that the judgment debtor has no property within the  
24 state subject to execution. If execution is levied against the  
25 property of the judgment debtor, the petitioner [~~must~~] shall

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1 show that the amount realized on the sale was insufficient to  
2 satisfy the judgment and [~~must~~] shall set forth the amount  
3 realized from the sale and the balance remaining due on the  
4 judgment after application of the amount realized;

5 (5) has made reasonable searches and inquiries  
6 to ascertain whether the judgment debtor is possessed of real  
7 or personal property or other assets liable to be sold or  
8 applied in satisfaction of the judgment, including partnership  
9 assets, licensee's estate or any bond or insurance, and that he  
10 has exercised reasonable diligence to secure payment of the  
11 judgment from the assets of the judgment debtor; and

12 (6) has a judgment that is not:

13 (a) covered by any bond, insurance,  
14 surety agreement or indemnity agreement;

15 (b) a loss incurred by a partner, joint  
16 venturer, employer, employee or associate of the licensee whose  
17 conduct is alleged to have caused the loss; or a corporate  
18 officer or director of a corporation in which the judgment  
19 debtor is also an officer, director or employee; or

20 (c) a loss incurred by any business or  
21 other entity in which the licensee whose conduct is alleged to  
22 have caused the loss has any interest at the time of the  
23 conduct alleged to have caused the loss. "

24 Section 11. Section 61-29-27 NMSA 1978 (being Laws 1980,  
25 Chapter 82, Section 8, as amended) is amended to read:

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1           "61-29-27. SUBROGATION. -- When the commission makes any  
2 payment from the real estate recovery fund to a judgment  
3 creditor, the commission shall be subrogated to all rights of  
4 the judgment creditor for the amounts paid out of the fund and  
5 any amount and interest so recovered by the commission shall be  
6 deposited in the fund. The commission may, pursuant to the  
7 provisions of the Uniform Licensing Act, revoke, suspend or  
8 refuse to renew ~~[the]~~ any license of ~~[any real estate broker or~~  
9 ~~salesperson]~~ a licensee for whom payment from the fund has been  
10 made in accordance with the provisions of the Real Estate  
11 Recovery Fund Act. Further, the ~~[commission]~~ commission may  
12 refuse to issue or renew the license of any person for whom  
13 payment from the real estate recovery fund has been made, until  
14 that person reimburses the fund for all payments made on his  
15 behalf. "

16           Section 12. TEMPORARY PROVISION. --

17           A. Until July 1, 2006, a person licensed as a  
18 salesperson pursuant to Chapter 61, Article 29 NMSA 1978 on  
19 June 30, 2003 may, upon satisfaction of all the requirements  
20 for licensure set forth in that article, continue to be  
21 licensed as a salesperson and may perform the functions of an  
22 associate broker. If, before July 1, 2006, the person  
23 completes the requirements for licensure as an associate  
24 broker, he shall, upon application to the New Mexico real  
25 estate commission, be licensed as an associate broker.

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