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SENATE BILL 105

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

Tim Eichenberg

AN ACT

RELATING TO LICENSING; CLARIFYING THE DEFINITION OF "BROKER"  
AND WHAT ACTIVITIES ARE EXEMPTED FROM BROKER LICENSING;  
EXTENDING CONTINUING EDUCATION REQUIREMENTS TO BROKERS OVER THE  
AGE OF SIXTY-FIVE EXCEPT FOR THOSE EXEMPT; PROVIDING FOR  
FINGERPRINTING AND CRIMINAL HISTORY BACKGROUND CHECKS FOR  
LICENSE APPLICANTS; ADJUSTING FEES; REMOVING CORPORATIONS,  
PARTNERSHIPS AND ASSOCIATIONS FROM BROKER LICENSING; ALLOWING  
FOR AND REGULATING FOREIGN AND NONRESIDENT BROKERS; AMENDING  
THE PENALTIES FOR UNLICENSED ACTIVITY; LOWERING THE MINIMUM  
BALANCE REQUIRED IN THE REAL ESTATE RECOVERY FUND; AMENDING AND  
REPEALING SECTIONS OF THE NMSA 1978.

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

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

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1 "61-29-2. DEFINITIONS AND EXCEPTIONS.--

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

3 (1) "agency relationship" means the fiduciary  
4 relationship created solely by an express written agency  
5 agreement between a person and a brokerage, authorizing the  
6 brokerage to act as an agent for the person according to the  
7 scope of authority granted in that express written agreement  
8 for real estate services subject to the jurisdiction of the  
9 commission;

10 (2) "agent" means the brokerage authorized,  
11 solely by means of an express written agreement, to act as a  
12 fiduciary for a person and to provide real estate services that  
13 are subject to the jurisdiction of the commission; in the case  
14 of an associate broker, "agent" means the person who has been  
15 authorized to act by that associate broker's qualifying broker;

16 (3) "associate broker" means a person who, for  
17 compensation or other valuable consideration, is associated  
18 with or engaged under contract by a qualifying broker to  
19 participate in an activity described in Paragraph (4) of this  
20 subsection or to carry on the qualifying broker's business as a  
21 whole or partial vocation;

22 (4) "broker" or "qualifying broker" means a  
23 person who for compensation or other consideration from  
24 another:

25 (a) lists, sells or offers to sell real

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1 estate; buys or offers to buy real estate; or negotiates the  
2 purchase, sale or exchange of real estate or options on real  
3 estate;

4 (b) is engaged in managing property for  
5 others;

6 [~~(b)~~] (c) leases, rents or auctions or  
7 offers to lease, rent or auction real estate;

8 [~~(e)~~] (d) advertises or [~~holds himself~~  
9 ~~out~~] makes any representation as being engaged in the business  
10 of buying, selling, exchanging, renting, leasing, auctioning or  
11 dealing with options on real estate for others as a whole or  
12 partial vocation; or

13 [~~(d)~~] (e) engages in the business of  
14 charging an advance fee or contracting for collection of a fee  
15 in connection with a contract under which the broker or  
16 qualifying broker undertakes primarily to promote the sale of  
17 real estate through its listing in a publication issued  
18 primarily for that purpose or for the purpose of referral of  
19 information concerning real estate to brokers, qualifying  
20 brokers or associate brokers;

21 (5) "brokerage" means a licensed qualifying  
22 broker and the licensed real estate business represented by the  
23 qualifying broker and its affiliated licensees;

24 (6) "brokerage relationship" means the legal  
25 or contractual relationship between a person and a brokerage in

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1 a real estate transaction subject to the jurisdiction of the  
2 commission;

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

7 (8) "commission" means the New Mexico real  
8 estate commission;

9 (9) "customer" means a buyer, seller, landlord  
10 or tenant who uses real estate services without entering into  
11 an express written agreement with a brokerage subject to the  
12 jurisdiction of the commission;

13 (10) "license" means a qualifying broker's  
14 license or an associate broker's license issued by the  
15 commission;

16 (11) "licensee" means a person holding a valid  
17 qualifying broker's license or an associate broker's license  
18 subject to the jurisdiction of the commission;

19 (12) "real estate" means land, improvements,  
20 leaseholds and other interests in real property that are less  
21 than a fee simple ownership interest, whether tangible or  
22 intangible;

23 (13) "real estate salesperson" means a person  
24 who, for compensation or other valuable consideration, is  
25 associated with or engaged under contract by a broker to

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1 participate in an activity described in Paragraph (4) of this  
2 subsection or to carry on the broker's business as a whole or  
3 partial vocation; and

4 (14) "transaction broker" means a qualifying  
5 broker, associate broker or brokerage that provides real estate  
6 services without entering into an agency relationship.

7 B. A single act of a person in performing or  
8 attempting to perform an activity described in Paragraph (4) of  
9 Subsection A of this section makes the person a qualifying  
10 broker. A single act of a person in performing or attempting  
11 to perform an activity described in Paragraph (3) of Subsection  
12 A of this section makes the person an associate broker.

13 C. The provisions of Chapter 61, Article 29 NMSA  
14 1978 do not apply to:

15 (1) a person who as owner [~~or lessor~~] performs  
16 any of the activities included in this section with reference  
17 to property owned [~~or leased~~] by the person, except when the  
18 sale or offering for sale of the property constitutes a  
19 subdivision containing one hundred or more parcels;

20 (2) the employees of the owner [~~or lessor~~] or  
21 the employees of a qualifying broker acting on behalf of the  
22 owner [~~or lessor~~], with respect to the property owned [~~or~~  
23 ~~leased~~], if the acts are performed in the regular course of or  
24 incident to the management of the property and the investments,  
25 except when the sale or offering for sale [~~or the lease or~~

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1 ~~offering for lease~~] of the property constitutes a subdivision  
2 containing one hundred or more parcels;

3 [~~(2)~~] (3) isolated or sporadic transactions  
4 not exceeding two transactions annually in which a person acts  
5 as attorney-in-fact under a duly executed power of attorney  
6 delivered by an owner authorizing the person to finally  
7 consummate and to perform under any contract the sale, leasing  
8 or exchange of real estate on behalf of the owner; and the  
9 owner or attorney-in-fact has not used a power of attorney for  
10 the purpose of evading the provisions of Chapter 61, Article 29  
11 NMSA 1978;

12 [~~(3)~~] (4) transactions in which a person acts  
13 as attorney-in-fact under a duly executed power of attorney  
14 delivered by an owner related to the attorney-in-fact within  
15 the fourth degree of consanguinity or closer, authorizing the  
16 person to finally consummate and to perform under any contract  
17 for the sale, leasing or exchange of real estate on behalf of  
18 the owner;

19 [~~(4)~~] (5) the services rendered by an attorney  
20 at law in the performance of the attorney's duties as an  
21 attorney at law;

22 [~~(5)~~] (6) a person acting in the capacity of a  
23 receiver, trustee in bankruptcy, administrator or executor, a  
24 person selling real estate pursuant to an order of any court or  
25 a trustee acting under a trust agreement, deed of trust or will

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1 or the regular salaried employee of a trustee;

2 [~~(6)~~] (7) the activities of a salaried  
3 employee of a governmental agency acting within the scope of  
4 employment; or

5 [~~(7)~~] (8) persons who deal exclusively in  
6 mineral leases or the sale or purchase of mineral rights or  
7 royalties in any case in which the fee to the land or the  
8 surface rights are in no way involved in the transaction."

9 SECTION 2. Section 61-29-4.1 NMSA 1978 (being Laws 1985,  
10 Chapter 89, Section 1, as amended) is amended to read:

11 "61-29-4.1. ADDITIONAL POWERS OF COMMISSION--CONTINUING  
12 EDUCATION PROGRAMS--MINIMUM REQUIREMENTS.--The commission shall  
13 adopt rules providing for continuing education courses in  
14 selling, leasing or managing residential, commercial and  
15 industrial property as well as courses in basic real estate law  
16 and practice and other courses prescribed by the commission.  
17 The regulations shall require that every licensee except  
18 licensees who [~~are sixty-five years of age or older and who~~  
19 ~~have a minimum of twenty years' continuously licensed~~  
20 ~~experience in the selling, leasing or managing of real~~  
21 ~~property]~~ were already exempted from continuing education  
22 requirements on the effective date of this 2011 act, as a  
23 condition of [~~his~~] license renewal, [~~shall~~] successfully  
24 complete thirty classroom hours of instruction every three  
25 years in courses approved by the commission. The rules may

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1 prescribe areas of specialty or expertise and may require that  
2 part of the classroom instruction be devoted to courses in the  
3 area of a licensee's specialty or expertise."

4 SECTION 3. Section 61-29-4.2 NMSA 1978 (being Laws 2001,  
5 Chapter 216, Section 1, as amended) is amended to read:

6 "61-29-4.2. ADDITIONAL POWERS OF THE COMMISSION--  
7 PROFESSIONAL LIABILITY INSURANCE--MINIMUM COVERAGE.--

8 A. In addition to the powers and duties granted to  
9 the commission pursuant to the provisions of Sections 61-29-4  
10 and 61-29-4.1 NMSA 1978, the commission may adopt rules that  
11 require professional liability insurance coverage and may  
12 establish the minimum terms and conditions of coverage,  
13 including limits of coverage and permitted exceptions. If  
14 adopted by the commission, the rules shall require every  
15 applicant for an active license and licensee who applies for  
16 renewal of an active license to provide the commission with  
17 satisfactory evidence that the applicant or licensee has  
18 professional liability insurance coverage that meets the  
19 minimum terms and conditions required by commission rule.

20 B. The commission is authorized to solicit sealed,  
21 competitive proposals from insurance carriers to provide a  
22 group professional liability insurance policy that complies  
23 with the terms and conditions established by commission rule.  
24 The commission may approve one or more policies that comply  
25 with the commission rules; provided that [~~the maximum annual~~

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1 ~~premium shall not exceed three hundred dollars (\$300) for a~~  
2 ~~licensee, that]~~ the minimum coverage shall not be less than one  
3 hundred thousand dollars (\$100,000) for an individual claim and  
4 not less than a five hundred thousand dollar (\$500,000)  
5 aggregate limit per policy and that the deductible shall not be  
6 greater than one thousand dollars (\$1,000).

7 C. Rules adopted by the commission shall permit an  
8 active licensee to satisfy any requirement for professional  
9 liability insurance coverage by purchasing an individual  
10 policy.

11 D. Rules adopted by the commission shall provide  
12 that there shall not be a requirement for a licensee to have  
13 professional liability insurance coverage during a period when  
14 a group policy, as provided in Subsection B of this section, is  
15 not in effect."

16 SECTION 4. Section 61-29-4.4 NMSA 1978 (being Laws 2005,  
17 Chapter 35, Section 6) is amended to read:

18 "61-29-4.4. ADDITIONAL POWERS OF COMMISSION--  
19 FINGERPRINTING AND CRIMINAL HISTORY BACKGROUND CHECKS--~~[The~~  
20 ~~commission may require license applicants, as a condition of~~  
21 ~~licensure, to submit to criminal background checks.]~~

22 A. All applicants for licensure as provided for in  
23 Chapter 61, Article 29 NMSA 1978 shall:

24 (1) be required to provide fingerprints on two  
25 fingerprint cards for submission to the federal bureau of

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1 investigation to conduct a national criminal history background  
2 check and to the department of public safety to conduct a state  
3 criminal history check;

4 (2) pay the cost of obtaining the fingerprints  
5 and criminal history background checks; and

6 (3) have the right to inspect or challenge the  
7 validity of the records resulting from the background check if  
8 the applicant is denied licensure as established by commission  
9 rule.

10 B. Electronic live scans may be used for conducting  
11 criminal history background checks.

12 C. Criminal history records obtained by the  
13 commission pursuant to the provisions of this section are  
14 confidential. The commission is authorized to use criminal  
15 history records obtained from the federal bureau of  
16 investigation and the department of public safety to conduct  
17 background checks on applicants for certification as provided  
18 for in Chapter 61, Article 29 NMSA 1978.

19 D. Criminal history records obtained by the  
20 commission pursuant to the provisions of this section shall not  
21 be used for any purpose other than conducting background  
22 checks. Criminal history records obtained pursuant to the  
23 provisions of this section and the information contained in  
24 those records shall not be released or disclosed to any other  
25 person or agency, except pursuant to a court order or with the

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1 written consent of the person who is the subject of the  
2 records.

3 E. A person who releases or discloses the criminal  
4 history records or information contained in those records in  
5 violation of the provisions of this section is guilty of a  
6 misdemeanor and shall be sentenced pursuant to the provisions  
7 of Section 31-19-1 NMSA 1978."

8 SECTION 5. Section 61-29-8 NMSA 1978 (being Laws 1959,  
9 Chapter 226, Section 7, as amended) is amended to read:

10 "61-29-8. LICENSE FEES--DISPOSITION.--

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

14 (1) for each examination, a fee established by  
15 the commission based on competitive bids for examination  
16 services submitted to the commission in response to a  
17 commission request for proposals, not to exceed [ninety-five  
18 ~~dollars (\$95.00)]~~ two hundred dollars (\$200);

19 (2) for each qualifying broker's license  
20 issued, a fee not to exceed two hundred seventy dollars (\$270)  
21 and for each renewal thereof, a fee not to exceed two hundred  
22 seventy dollars (\$270);

23 (3) for each associate broker's license  
24 issued, a fee not to exceed two hundred seventy dollars (\$270)  
25 and for each renewal thereof, a fee not to exceed two hundred

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1 seventy dollars (\$270);

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

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

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

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

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

15 (9) for each hard copy or electronic list of  
16 licensed associate brokers and qualifying brokers, a fee not to  
17 exceed [~~twenty dollars (\$20.00)~~] one hundred twenty-five  
18 dollars (\$125);

19 (10) for each license reissued for an  
20 associate broker because of change of address of the qualifying  
21 broker's office or death of the qualifying broker when a  
22 successor qualifying broker is replacing the decedent and the  
23 associate broker remains in the office or because of a change  
24 of name of the office or the entity of the qualifying broker, a  
25 fee in an amount not to exceed twenty dollars (\$20.00) to be

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1 paid by the qualifying broker or successor qualifying broker as  
2 the case may be; but if there are eleven or more affected  
3 associate brokers in the qualifying broker's office, the total  
4 fee paid to effect reissuance of all of those licenses shall  
5 not exceed two hundred dollars (\$200);

6 (11) for each application to the commission to  
7 become an approved sponsor of prelicensing and continuing  
8 education courses, a fee not to exceed five hundred dollars  
9 (\$500) and for each renewal thereof, a fee not to exceed five  
10 hundred dollars (\$500);

11 (12) for each application to the commission to  
12 become an approved instructor of prelicensing and continuing  
13 education courses, a fee not to exceed seventy dollars (\$70.00)  
14 per course; and

15 (13) for each application to the commission to  
16 renew certification as a commission-approved instructor, a fee  
17 not to exceed one hundred dollars (\$100).

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

23 C. The commission shall deposit all money received  
24 by it from fees in accordance with the provisions of Chapter  
25 61, Article 29 NMSA 1978 with the state treasurer, who shall

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1 keep that money in a separate fund to be known as the "real  
2 estate commission fund", and money so deposited in that fund is  
3 appropriated to the commission for the purpose of carrying out  
4 the provisions of Section 61-29-4 NMSA 1978 or to maintain the  
5 real estate recovery fund as required by the Real Estate  
6 Recovery Fund Act and shall be paid out of the fund upon the  
7 vouchers of the executive secretary of the commission or [~~his~~  
8 the executive secretary's designee; provided that the total  
9 fees and charges collected and paid into the state treasury and  
10 any money so deposited shall be expended only for the purposes  
11 authorized by Chapter 61, Article 29 NMSA 1978."

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

14 "61-29-9. QUALIFICATIONS FOR LICENSE.--

15 A. Licenses shall be granted only to persons who  
16 meet the requirements for licensure prescribed by law and are  
17 deemed by the commission to be of good repute and competent to  
18 transact the business of a qualifying broker or an associate  
19 broker in a manner that safeguards the interests of the public.

20 B. An applicant for a qualifying broker's license  
21 or an associate broker's license shall be a legal resident of  
22 the United States and have reached the age of majority. Each  
23 applicant for a qualifying broker's license or an associate  
24 broker's license shall have passed the real estate examination  
25 approved by the commission and shall:

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1 (1) furnish the commission with a certificate  
2 that the applicant has completed successfully ninety classroom  
3 hours of instruction in basic real estate courses approved by  
4 the commission, thirty hours of which shall have been a broker  
5 basics course; or

6 (2) furnish the commission with a certificate  
7 that the applicant is a duly licensed real estate broker in  
8 good standing in another state; provided that the applicant has  
9 successfully completed ninety classroom hours of instruction in  
10 basic real estate courses approved by the commission, thirty  
11 hours of which shall have been a broker basics course.

12 C. An applicant for a qualifying broker's license  
13 shall have been actively engaged in the real estate business as  
14 an associate broker or real estate salesperson for at least two  
15 of the last five years immediately preceding application for a  
16 qualifying broker's license and furnish the commission proof  
17 that the applicant has completed successfully one hundred  
18 twenty hours of prelicensing courses, including a broker basics  
19 course, approved by the commission.

20 D. A licensee holding a current real estate  
21 salesperson's license on the effective date of this 2005 act  
22 shall automatically qualify for an associate broker's license  
23 without any additional requirements. However, to be eligible  
24 to apply for a qualifying broker's license, a real estate  
25 salesperson obtaining an associate broker's license pursuant to

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1 this subsection shall, in addition to meeting all other  
2 requirements for a qualifying broker's license, pass a real  
3 estate broker's examination approved by the commission.

4 E. The commission shall require the information it  
5 deems necessary from every applicant to determine that  
6 applicant's honesty, trustworthiness and competency.  
7 ~~[Corporations, partnerships or associations may hold a~~  
8 ~~qualifying broker's license issued in the name of the~~  
9 ~~corporation, partnership or association; provided that at least~~  
10 ~~one member of the partnership or association, or one officer or~~  
11 ~~employee of a corporation, who actively engages in the real~~  
12 ~~estate business first secures a qualifying broker's license.~~  
13 ~~The license shall be issued in the name of the corporation,~~  
14 ~~partnership or association, naming the partner, associate~~  
15 ~~officer or employee as qualifying broker for the corporation,~~  
16 ~~partnership or association.]"~~

17 SECTION 7. Section 61-29-12 NMSA 1978 (being Laws 1959,  
18 Chapter 226, Section 11, as amended) is amended to read:

19 "61-29-12. REFUSAL, SUSPENSION OR REVOCATION OF LICENSE  
20 FOR CAUSES ENUMERATED.--

21 A. The commission may refuse to issue a license or  
22 may suspend, revoke, limit or condition a license if the  
23 applicant or licensee has by false or fraudulent  
24 representations obtained a license or, in performing or  
25 attempting to perform any of the actions specified in Chapter

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1 61, Article 29 NMSA 1978, an applicant or licensee has:

2 (1) made a substantial misrepresentation;

3 (2) pursued a continued and flagrant course of  
4 misrepresentation; made false promises through agents,  
5 salespersons, advertising or otherwise; or used any trade name  
6 or insignia of membership in any real estate organization of  
7 which the licensee is not a member;

8 (3) paid or received a rebate, profit,  
9 compensation or commission to or from any unlicensed person,  
10 except the licensee's principal or other party to the  
11 transaction, and then only with that principal's written  
12 consent;

13 (4) represented or attempted to represent a  
14 qualifying broker other than a qualifying broker with whom the  
15 licensee is associated without the express knowledge and  
16 consent of that qualifying broker;

17 (5) failed, within a reasonable time, to  
18 account for or to remit any money coming into the licensee's  
19 possession that belongs to others, commingled funds of others  
20 with the licensee's own or failed to keep funds of others in an  
21 escrow or trustee account or failed to furnish legible copies  
22 of all listing and sales contracts to all parties executing  
23 them;

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

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1 turpitude;

2 (7) employed or compensated, directly or  
3 indirectly, a person for performing any of the acts regulated  
4 by Chapter 61, Article 29 NMSA 1978 who is not a licensed  
5 qualifying broker or an associate broker; provided, however,  
6 that a qualifying broker may pay a commission to a qualifying  
7 broker of another state [~~provided further that the nonresident~~  
8 ~~broker shall not conduct in this state any of the negotiations~~  
9 ~~for which a fee, compensation or commission is paid except in~~  
10 ~~cooperation with a licensed qualifying broker of this state]~~ as  
11 provided in Section 61-29-16.1 NMSA 1978;

12 (8) failed, if a qualifying broker, to place  
13 as soon after receipt as is practicably possible, after  
14 securing signatures of all parties to the transaction, any  
15 deposit money or other money received by the qualifying broker  
16 in a real estate transaction in a custodial, trust or escrow  
17 account, maintained by the qualifying broker in a bank or  
18 savings and loan institution or title company authorized to do  
19 business in this state, in which the funds shall be kept until  
20 the transaction is consummated or otherwise terminated, at  
21 which time a full accounting of the funds shall be made by the  
22 qualifying broker. Records relative to the deposit,  
23 maintenance and withdrawal of the funds shall contain  
24 information as may be prescribed by the rules of the  
25 commission. Nothing in this paragraph prohibits a qualifying

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1 broker from depositing nontrust funds in an amount not to  
2 exceed the required minimum balance in each trust account so as  
3 to meet the minimum balance requirements of the bank necessary  
4 to maintain the account and avoid charges. The minimum balance  
5 deposit shall not be considered commingling and shall not be  
6 subject to levy, attachment or garnishment. This paragraph  
7 does not prohibit a qualifying broker from depositing any  
8 deposit money or other money received by the qualifying broker  
9 in a real estate transaction with another cooperating broker  
10 who shall in turn comply with this paragraph;

11 (9) failed, if an associate broker, to place  
12 as soon after receipt as is practicably possible in the custody  
13 of the associate broker's qualifying broker, after securing  
14 signatures of all parties to the transaction, any deposit money  
15 or other money entrusted to the associate broker by any person  
16 dealing with the associate broker as the representative of the  
17 qualifying broker;

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

20 (11) committed an act, whether of the same or  
21 different character from that specified in this subsection,  
22 that is related to dealings as a qualifying broker or an  
23 associate broker and that constitutes or demonstrates bad  
24 faith, incompetency, untrustworthiness, impropriety, fraud,  
25 dishonesty, negligence or any unlawful act; or

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

5 B. An unlawful act or violation of Chapter 61,  
6 Article 29 NMSA 1978 by an associate broker, employee, partner  
7 or associate of a qualifying broker shall not be cause for the  
8 revocation of a license of the qualifying broker unless it  
9 appears to the satisfaction of the commission that the  
10 qualifying broker had guilty knowledge of the unlawful act or  
11 violation."

12 SECTION 8. Section 61-29-16.1 NMSA 1978 (being Laws 2005,  
13 Chapter 35, Section 15) is amended to read:

14 "61-29-16.1. FOREIGN BROKERS--NONRESIDENT LICENSEES--  
15 [~~CONSENT TO SERVICE~~].-- [~~A nonresident~~]

16 A. A foreign associate broker or qualifying broker  
17 currently licensed by another state or licensing jurisdiction  
18 other than New Mexico may engage in real estate activity in New  
19 Mexico as a foreign broker; provided that the foreign broker  
20 enters into a transaction-specific written agreement with a New  
21 Mexico licensed qualifying broker prior to commencing such real  
22 estate activity. The foreign broker shall comply with all New  
23 Mexico laws, including those acts regulated by Chapter 61,  
24 Article 29 NMSA 1978.

25 B. An associate broker or qualifying broker with a

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1 license application address that is not within the state of New  
2 Mexico shall file with the commission an irrevocable consent  
3 that lawsuits and actions may be commenced against the  
4 [~~nonresident~~] associate broker or qualifying broker in the  
5 proper court of any county of this state in which a cause of  
6 action may arise or in which the plaintiff may reside, by  
7 service on the commission of any process or pleadings  
8 authorized by the laws of this state, the consent stipulating  
9 and agreeing that such service of process or pleadings on the  
10 commission is as valid and binding as if personal service had  
11 been made upon the [~~nonresident licensee~~] associate broker or  
12 qualifying broker in New Mexico. [~~The instrument containing~~  
13 ~~the consent shall be acknowledged and, if executed on behalf of~~  
14 ~~a corporation or association, shall be accompanied by a~~  
15 ~~certified copy of the resolution of the proper officers or~~  
16 ~~managing board authorizing the executing officer to execute the~~  
17 ~~instrument.~~] Service of process or pleadings shall be served in  
18 duplicate upon the commission; one shall be filed in the office  
19 of the commission and the other immediately forwarded by  
20 certified mail to the main office of the [~~nonresident licensee~~]  
21 associate broker or qualifying broker against whom the process  
22 or pleadings are directed."

23 SECTION 9. Section 61-29-17 NMSA 1978 (being Laws 1965,  
24 Chapter 304, Section 8, as amended) is amended to read:

25 "61-29-17. PENALTY--INJUNCTIVE RELIEF.--

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underscoring material = new  
[bracketed material] = delete

1           A. Any person who violates any provision of Chapter  
2 61, Article 29 NMSA 1978 is guilty of a ~~[misdemeanor]~~ fourth  
3 degree felony and shall be punished by a fine of not more than  
4 ~~[five hundred dollars (\$500)]~~ five thousand dollars (\$5,000) or  
5 by imprisonment for ~~[not more than six]~~ a definite term of  
6 eighteen months, or both. ~~[Any corporation or business~~  
7 ~~association which violates any provision of Chapter 61, Article~~  
8 ~~29 NMSA 1978 shall be punished by a fine of not more than one~~  
9 ~~thousand dollars (\$1,000).]~~

10           B. In the event any person ~~[business association or~~  
11 ~~corporation]~~ has engaged or proposes to engage in any act or  
12 practice violative of a provision of Chapter 61, Article 29  
13 NMSA 1978, the attorney general or the district attorney of the  
14 judicial district in which the person resides or the judicial  
15 district in which the violation has occurred or will occur  
16 shall, upon application of the commission, maintain an action  
17 in the name of the state to prosecute the violation or to  
18 enjoin the proposed act or practice.

19           C. In any action brought under Subsection B of this  
20 section, if the court finds that a person is engaged or has  
21 willfully engaged in any act or practice violative of a  
22 provision of Sections 61-29-1 through 61-29-18 NMSA 1978, the  
23 attorney general or the district attorney of the judicial  
24 district in which the person resides or the judicial district  
25 in which the violation has occurred or is occurring shall, upon

underscored material = new  
[bracketed material] = delete

1 petition to the court, recover on behalf of the state [~~of New~~  
2 ~~Mexico~~] a civil penalty not exceeding five thousand dollars  
3 (\$5,000) per violation and [~~attorneys'~~] attorney fees and  
4 costs."

5 SECTION 10. Section 61-29-17.2 NMSA 1978 (being Laws  
6 2001, Chapter 163, Section 11) is amended to read:

7 "61-29-17.2. UNLICENSED ACTIVITY--CIVIL PENALTY--  
8 ADMINISTRATIVE COSTS.--The commission may impose a civil  
9 penalty on any person who is found, through a court or  
10 administrative proceeding, to have acted in violation of  
11 Chapter 61, Article 29 NMSA 1978 in an amount not to exceed one  
12 thousand dollars (\$1,000) for each violation [~~and~~] or, if the  
13 commission can so determine, in the amount of the total  
14 commissions received by the person for the unlicensed activity.  
15 The commission may assess administrative costs for any  
16 investigation and administrative or other proceedings against  
17 any such person [~~who is found, through a court or~~  
18 ~~administrative proceeding, to have acted without a license in~~  
19 ~~violation of Chapter 61, Article 29 NMSA 1978~~]. Any money  
20 collected by the commission under the provisions of this  
21 section shall be deposited into the real estate recovery fund."

22 SECTION 11. Section 61-29-22 NMSA 1978 (being Laws 1980,  
23 Chapter 82, Section 3, as amended) is amended to read:

24 "61-29-22. ADDITIONAL FEES.--

25 A. The commission shall collect an annual fee not

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[bracketed material] = delete

1 in excess of ten dollars (\$10.00) from each real estate  
2 licensee prior to the issuance of the next license.

3 B. The commission shall collect from each  
4 successful applicant for an original real estate license, in  
5 addition to ~~[his]~~ the original license fee, a fee not in excess  
6 of ten dollars (\$10.00).

7 C. The additional fees provided by this section  
8 shall be credited to the real estate recovery fund. The amount  
9 of the real estate recovery fund shall be maintained at ~~[two~~  
10 ~~hundred fifty thousand dollars (\$250,000)]~~ one hundred fifty  
11 thousand dollars (\$150,000). If the real estate recovery fund  
12 falls below this amount, the commission shall have authority to  
13 adjust the annual amount of additional fees to be charged  
14 licensees or to draw on the real estate commission fund in  
15 order to maintain the fund level as required in this section.  
16 If on July 1 of any year, the balance in the fund exceeds four  
17 hundred thousand dollars (\$400,000), the amount over four  
18 hundred thousand dollars (\$400,000) shall be transferred to the  
19 real estate commission fund to be used for the purposes of  
20 carrying out the provisions of Chapter 61, Article 29 NMSA  
21 1978."

22 SECTION 12. REPEAL.--Section 61-29-19 NMSA 1978 (being  
23 Laws 1978, Chapter 203, Section 2, as amended) is repealed.

24 SECTION 13. EFFECTIVE DATE.--The effective date of the  
25 provisions of this act is January 1, 2012.

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