

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

AN ACT

RELATING TO PROFESSIONAL LICENSES; AMENDING AND ENACTING
SECTIONS OF CHAPTER 61, ARTICLE 29 NMSA 1978 TO PROVIDE FOR
FOREIGN BROKERS ACTING AS QUALIFYING OR ASSOCIATE BROKERS
WITH RESPECT TO COMMERCIAL REAL ESTATE IN NEW MEXICO.

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:

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

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

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

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

1 (3) "associate broker" means a person who,
2 for compensation or other valuable consideration, is
3 associated with or engaged under contract by a qualifying
4 broker to carry on the qualifying broker's business as a
5 whole or partial vocation, and:

6 (a) lists, sells or offers to sell real
7 estate; buys or offers to buy real estate; or negotiates the
8 purchase, sale or exchange of real estate or options on real
9 estate;

10 (b) is engaged in managing property for
11 others;

12 (c) leases, rents or auctions or offers
13 to lease, rent or auction real estate;

14 (d) advertises or makes any
15 representation as being engaged in the business of buying,
16 selling, exchanging, renting, leasing, auctioning or dealing
17 with options on real estate for others as a whole or partial
18 vocation; or

19 (e) engages in the business of charging
20 an advance fee or contracting for collection of a fee in
21 connection with a contract under which the qualifying broker
22 undertakes primarily to promote the sale of real estate
23 through its listing in a publication issued primarily for
24 that purpose or for the purpose of referral of information
25 concerning real estate to other qualifying brokers or

1 associate brokers;

2 (4) "brokerage" means a licensed qualifying
3 broker and the licensed real estate business represented by
4 the qualifying broker and its affiliated licensees;

5 (5) "brokerage relationship" means the legal
6 or contractual relationship between a person and a brokerage
7 in a real estate transaction subject to the jurisdiction of
8 the commission;

9 (6) "client" means a person who has entered
10 into an express written agreement with a brokerage for real
11 estate services subject to the jurisdiction of the
12 commission;

13 (7) "commercial real estate" means real
14 estate that is zoned:

15 (a) for business or commercial use by a
16 city or county; or

17 (b) by a city or county to allow five
18 or more multifamily units; provided that all units are
19 located on a single parcel of land with a single legal
20 description;

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

23 (9) "customer" means a person who uses real
24 estate services without entering into an express written
25 agreement with a brokerage subject to the jurisdiction of the

1 commission;

2 (10) "foreign broker" means a real estate
3 broker who does not hold a real estate license issued by the
4 commission, but who holds a current and valid real estate
5 broker's license issued by another state in the United
6 States, a province of Canada or any other sovereign nation;

7 (11) "license" means a qualifying broker's
8 license or an associate broker's license issued by the
9 commission;

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

13 (13) "nonresident licensee" means an
14 associate or qualifying broker holding a real estate license
15 issued by the commission and whose license application
16 address is not within the state of New Mexico;

17 (14) "qualifying broker" means a licensed
18 real estate broker who has qualified a proprietorship,
19 corporation, partnership or association to do business as a
20 real estate brokerage in the state of New Mexico, who
21 discharges the responsibilities specific to a qualifying
22 broker as defined by the commission and who for compensation
23 or other consideration from another:

24 (a) lists, sells or offers to sell real
25 estate; buys or offers to buy real estate; or negotiates the

1 purchase, sale or exchange of real estate or options on real
2 estate;

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

5 (c) leases, rents or auctions or offers
6 to lease, rent or auction real estate;

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

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

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

24 (16) "transaction broker" means a qualifying
25 broker, associate broker or brokerage that provides real

1 estate services without entering into an agency relationship.

2 B. A single act of a person in performing or
3 attempting to perform an activity described in Paragraph (14)
4 of Subsection A of this section makes the person a qualifying
5 broker. A single act of a person in performing or attempting
6 to perform an activity described in Paragraph (3) of
7 Subsection A of this section makes the person an associate
8 broker.

9 C. The provisions of Chapter 61, Article 29 NMSA
10 1978 do not apply to:

11 (1) a person who as owner performs any of
12 the activities included in this section with reference to
13 property owned by the person, except when the sale or
14 offering for sale of the property constitutes a subdivision
15 containing one hundred or more parcels;

16 (2) the employees of the owner or the
17 employees of a qualifying broker acting on behalf of the
18 owner, with respect to the property owned, if the acts are
19 performed in the regular course of or incident to the
20 management of the property and the investments;

21 (3) isolated or sporadic transactions not
22 exceeding two transactions annually in which a person acts as
23 attorney-in-fact under a duly executed power of attorney
24 delivered by an owner authorizing the person to finally
25 consummate and to perform under any contract the sale,

1 leasing or exchange of real estate on behalf of the owner;
2 and the owner or attorney-in-fact has not used a power of
3 attorney for the purpose of evading the provisions of Chapter
4 61, Article 29 NMSA 1978;

5 (4) transactions in which a person acts as
6 attorney-in-fact under a duly executed power of attorney
7 delivered by an owner related to the attorney-in-fact within
8 the fourth degree of consanguinity or closer, authorizing the
9 person to finally consummate and to perform under any
10 contract for the sale, leasing or exchange of real estate on
11 behalf of the owner;

12 (5) the services rendered by an attorney at
13 law in the performance of the attorney's duties as an
14 attorney at law;

15 (6) a person acting in the capacity of a
16 receiver, trustee in bankruptcy, administrator or executor, a
17 person selling real estate pursuant to an order of any court
18 or a trustee acting under a trust agreement, deed of trust or
19 will or the regular salaried employee of a trustee;

20 (7) the activities of a salaried employee of
21 a governmental agency acting within the scope of employment;
22 or

23 (8) persons who deal exclusively in mineral
24 leases or the sale or purchase of mineral rights or royalties
25 in any case in which the fee to the land or the surface

1 rights are in no way involved in the transaction."

2 SECTION 2. Section 61-29-16.1 NMSA 1978 (being Laws
3 2005, Chapter 35, Section 15, as amended) is amended to read:

4 "61-29-16.1. FOREIGN BROKERS--CONSENT TO SERVICE--
5 REFERRAL FEES.--

6 A. A foreign broker may act in the capacity of a
7 qualifying or associate broker with respect to commercial
8 real estate located in New Mexico; provided that prior to
9 performing any of the real estate activities of a qualifying
10 or associate broker, the foreign broker enters into a
11 transaction-specific written agreement with a New Mexico
12 qualifying broker that includes, at a minimum:

13 (1) a description of the parties, the
14 commercial real estate and any additional information
15 necessary to identify the specific transaction governed by
16 the agreement;

17 (2) the terms of compensation between the
18 foreign broker and the New Mexico qualifying broker;

19 (3) the effective date and definitive
20 termination date of the agreement; and

21 (4) a statement that the foreign broker
22 agrees to:

23 (a) cooperate fully with the New Mexico
24 qualifying broker and all associate brokers designated by the
25 New Mexico qualifying broker;

1 (b) except for the foreign broker's
2 interaction with the foreign broker's client, conduct all
3 contact with parties, including the general public and other
4 brokers, in association with the New Mexico qualifying broker
5 or associate broker designated by the New Mexico qualifying
6 broker;

7 (c) conduct all marketing and
8 solicitations for business in the name of the New Mexico
9 qualifying broker;

10 (d) timely furnish to the New Mexico
11 qualifying broker copies of all documents related to the
12 transaction that are required by the laws of New Mexico to be
13 retained by its licensees, including without limitation,
14 agency disclosure, offers, counteroffers, purchase and sale
15 contracts, leases and closing statements;

16 (e) comply with and be bound by and
17 subject to New Mexico law and the regulations of the
18 commission; and

19 (f) submit to the jurisdiction of the
20 courts of New Mexico with respect to the transaction and any
21 and all claims related thereto by service of process upon the
22 secretary of state of New Mexico and upon the appropriate
23 official of the state, province or nation of the foreign
24 broker's real estate licensure.

25 B. When a New Mexico associate broker or

1 qualifying broker makes a referral to or receives a referral
2 from a foreign broker for the purpose of receiving a fee,
3 commission or any other consideration, the qualifying broker
4 of the New Mexico brokerage and the foreign broker shall
5 execute a written, transaction-specific referral agreement at
6 the time of the referral."

7 SECTION 3. Section 61-29-17 NMSA 1978 (being Laws 1965,
8 Chapter 304, Section 8, as amended) is amended to read:

9 "61-29-17. PENALTY--INJUNCTIVE RELIEF.--

10 A. Any person who engages in the business or acts
11 in the capacity of an associate broker or a qualifying broker
12 within New Mexico without a license issued by the commission
13 or pursuant to Section 61-29-16.1 NMSA 1978 is guilty of a
14 fourth degree felony. Any person who violates any other
15 provision of Chapter 61, Article 29 NMSA 1978 is guilty of a
16 misdemeanor and shall be punished by a fine of not more than
17 five hundred dollars (\$500) or imprisonment for not more than
18 six months, or both.

19 B. In the event any person has engaged or proposes
20 to engage in any act or practice violative of a provision of
21 Chapter 61, Article 29 NMSA 1978, the attorney general or the
22 district attorney of the judicial district in which the
23 person resides or the judicial district in which the
24 violation has occurred or will occur may, upon application of
25 the commission, maintain an action in the name of the state

1 to prosecute the violation or to enjoin the proposed act or
2 practice.

3 C. In any action brought under Subsection B of
4 this section, if the court finds that a person is engaged or
5 has willfully engaged in any act or practice violative of a
6 provision of Sections 61-29-1 through 61-29-18 NMSA 1978, the
7 attorney general or the district attorney of the judicial
8 district in which the person resides or the judicial district
9 in which the violation has occurred or is occurring may, upon
10 petition to the court, recover on behalf of the state a civil
11 penalty not exceeding five thousand dollars (\$5,000) per
12 violation and attorney fees and costs."

13 SECTION 4. A new section of Chapter 61, Article 29 NMSA
14 1978 is enacted to read:

15 "NONRESIDENT LICENSEES--CONSENT TO SERVICE.--

16 A. A nonresident licensee shall file with the
17 commission an irrevocable consent that lawsuits and actions
18 may be commenced against the associate broker or qualifying
19 broker in the proper court of any county of New Mexico in
20 which a cause of action may arise or in which the plaintiff
21 may reside, by service on the commission of any process or
22 pleadings authorized by the laws of New Mexico, the consent
23 stipulating and agreeing that such service of process or
24 pleadings on the commission is as valid and binding as if
25 personal service had been made upon the associate broker or

1 qualifying broker in New Mexico.

2 B. Service of process or pleadings shall be served
3 in duplicate upon the commission; one shall be filed in the
4 office of the commission and the other immediately forwarded
5 by certified mail to the main office of the associate broker
6 or qualifying broker against whom the process or pleadings
7 are directed." _____

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25