

1 SENATE BILL 120

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

4 Pat Woods

10 AN ACT

11 RELATING TO REAL ESTATE BROKERS; EXEMPTING AN AUCTIONEER
 12 WORKING UNDER THE CONTROL OF A QUALIFYING BROKER FROM THE
 13 LICENSURE REQUIREMENTS; PROVIDING SCORC → ~~THAT AN AUCTIONEER MAY~~
 14 ~~ONLY RECEIVE A FEE FOR SERVICES AND NOT A COMMISSION.~~ ← SCORC
 15 SCORC → ~~REQUIREMENTS FOR THE AGREEMENT BETWEEN THE AUCTIONEER AND~~
 16 ~~QUALIFYING BROKER.~~ ← SCORC

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

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

21 "61-29-2. DEFINITIONS AND EXCEPTIONS.--

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

23 (1) "agency relationship" means the fiduciary
 24 relationship created solely by an express written agency
 25 agreement between a person and a brokerage, authorizing the

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1 brokerage to act as an agent for the person according to the
2 scope of authority granted in that express written agreement
3 for real estate services subject to the jurisdiction of the
4 commission;

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

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

16 (a) 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) is engaged in managing property for
21 others;

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

24 (d) advertises or makes any
25 representation as being engaged in the business of buying,

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

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

11 (4) "auctioneer" means a person who auctions
12 or offers to auction real property;

13 [~~(4)~~] (5) "brokerage" means a licensed
14 qualifying broker and the licensed real estate business
15 represented by the qualifying broker and its affiliated
16 licensees;

17 [~~(5)~~] (6) "brokerage relationship" means the
18 legal or contractual relationship between a person and a
19 brokerage in a real estate transaction subject to the
20 jurisdiction of the commission;

21 [~~(6)~~] (7) "client" means a person who has
22 entered into an express written agreement with a brokerage for
23 real estate services subject to the jurisdiction of the
24 commission;

25 [~~(7)~~] (8) "commercial real estate" means real

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1 estate that is zoned:

2 (a) for business or commercial use by a
3 city or county; or

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

7 [~~(8)~~] (9) "commission" means the New Mexico
8 real estate commission;

9 [~~(9)~~] (10) "customer" means a person who uses
10 real estate services without entering into an express written
11 agreement with a brokerage subject to the jurisdiction of the
12 commission;

13 [~~(10)~~] (11) "foreign broker" means a real
14 estate broker who does not hold a real estate license issued by
15 the commission, but who holds a current and valid real estate
16 broker's license issued by another state in the United States,
17 a province of Canada or any other sovereign nation;

18 [~~(11)~~] (12) "license" means a qualifying
19 broker's license or an associate broker's license issued by the
20 commission;

21 [~~(12)~~] (13) "licensee" means a person holding
22 a valid qualifying broker's license or an associate broker's
23 license subject to the jurisdiction of the commission;

24 [~~(13)~~] (14) "nonresident licensee" means an
25 associate or qualifying broker holding a real estate license

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1 issued by the commission and whose license application address
2 is not within the state of New Mexico;

3 [~~(14)~~] (15) "qualifying broker" means a
4 licensed real estate broker who has qualified a proprietorship,
5 corporation, partnership or association to do business as a
6 real estate brokerage in the state of New Mexico, who
7 discharges the responsibilities specific to a qualifying broker
8 as defined by the commission and who for compensation or other
9 consideration from another:

10 (a) lists, sells or offers to sell real
11 estate; buys or offers to buy real estate; or negotiates the
12 purchase, sale or exchange of real estate or options on real
13 estate;

14 (b) is engaged in managing property for
15 others;

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

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

23 (e) engages in the business of charging
24 an advance fee or contracting for collection of a fee in
25 connection with a contract under which the qualifying broker

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1 undertakes primarily to promote the sale of real estate through
2 its listing in a publication issued primarily for that purpose
3 or for the purpose of referral of information concerning real
4 estate to other qualifying brokers or associate brokers;

5 ~~[(15)]~~ (16) "real estate" means land,
6 improvements, leaseholds and other interests in real property
7 that are less than a fee simple ownership interest, whether
8 tangible or intangible; and

9 ~~[(16)]~~ (17) "transaction broker" means a
10 qualifying broker, associate broker or brokerage that provides
11 real estate services without entering into an agency
12 relationship.

13 B. A single act of a person in performing or
14 attempting to perform an activity described in Paragraph ~~[(14)]~~
15 (15) of Subsection A of this section makes the person a
16 qualifying broker. A single act of a person in performing or
17 attempting to perform an activity described in Paragraph (3) of
18 Subsection A of this section makes the person an associate
19 broker.

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

22 (1) a person who as owner performs any of the
23 activities included in this section with reference to property
24 owned by the person, except when the sale or offering for sale
25 of the property constitutes a subdivision containing one

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1 hundred or more parcels;

2 (2) the employees of the owner or the
3 employees of a qualifying broker acting on behalf of the owner,
4 with respect to the property owned, if the acts are performed
5 in the regular course of or incident to the management of the
6 property and the investments;

7 (3) 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 (4) 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 (5) the services rendered by an attorney at
24 law in the performance of the attorney's duties as an attorney
25 at law;

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

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

8 (8) 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; or

12 SCORC→ ~~(9) an auctioneer working under the~~
13 ~~control of a qualifying broker by means of an express written~~
14 ~~agreement with the brokerage; provided that an auctioneer who~~
15 ~~is not a broker may only receive a fee for services performed~~
16 ~~in the auction and shall not receive a commission."~~←SCORC

17 SCORC→ (9) an auctioneer; provided that
18 payments to an auctioneer for services rendered in connection
19 with an auction shall be made to the auctioneer by a qualifying
20 broker, and prior to performing an auction of real estate, the
21 auctioneer shall enter into a transaction-specific written
22 agreement with a qualifying broker that includes:

23 (a) a description of the parties, the
24 real estate and any additional information necessary to
25 identify the specific transaction governed by the agreement;

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1 (b) the terms of compensation between
2 the auctioneer and the qualifying broker;

3 (c) the effective date and definitive
4 termination date of the agreement; and

5 (d) a statement that the auctioneer
6 agrees to: 1) cooperate fully with the qualifying broker and
7 all associate brokers designated by the qualifying broker; 2)
8 conduct all contact with parties, including the general public
9 and other brokers, in association with the qualifying broker or
10 associate brokers designated by the qualifying broker; and 3)
11 conduct all marketing and solicitations for business in the
12 name of the qualifying broker."←SCORC