

1 SENATE BILL 120

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

3 INTRODUCED BY

4 Pat Woods

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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 THAT AN AUCTIONEER MAY ONLY
14 RECEIVE A FEE FOR SERVICES AND NOT A COMMISSION.

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

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

19 "61-29-2. DEFINITIONS AND EXCEPTIONS.--

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

21 (1) "agency relationship" means the fiduciary
22 relationship created solely by an express written agency
23 agreement between a person and a brokerage, authorizing the
24 brokerage to act as an agent for the person according to the
25 scope of authority granted in that express written agreement

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1 for real estate services subject to the jurisdiction of the
2 commission;

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

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

14 (a) lists, sells or offers to sell real
15 estate; buys or offers to buy real estate; or negotiates the
16 purchase, sale or exchange of real estate or options on real
17 estate;

18 (b) is engaged in managing property for
19 others;

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

22 (d) advertises or makes any
23 representation as being engaged in the business of buying,
24 selling, exchanging, renting, leasing, auctioning or dealing
25 with options on real estate for others as a whole or partial

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1 vocation; or

2 (e) 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 the qualifying broker
5 undertakes primarily to promote the sale of real estate through
6 its listing in a publication issued primarily for that purpose
7 or for the purpose of referral of information concerning real
8 estate to other qualifying brokers or associate brokers;

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

11 [~~(4)~~] (5) "brokerage" means a licensed
12 qualifying broker and the licensed real estate business
13 represented by the qualifying broker and its affiliated
14 licensees;

15 [~~(5)~~] (6) "brokerage relationship" means the
16 legal or contractual relationship between a person and a
17 brokerage in a real estate transaction subject to the
18 jurisdiction of the commission;

19 [~~(6)~~] (7) "client" means a person who has
20 entered into an express written agreement with a brokerage for
21 real estate services subject to the jurisdiction of the
22 commission;

23 [~~(7)~~] (8) "commercial real estate" means real
24 estate that is zoned:

25 (a) for business or commercial use by a

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1 city or county; or

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

5 [~~(8)~~] (9) "commission" means the New Mexico
6 real estate commission;

7 [~~(9)~~] (10) "customer" means a person who uses
8 real estate services without entering into an express written
9 agreement with a brokerage subject to the jurisdiction of the
10 commission;

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

16 [~~(11)~~] (12) "license" means a qualifying
17 broker's license or an associate broker's license issued by the
18 commission;

19 [~~(12)~~] (13) "licensee" means a person holding
20 a valid qualifying broker's license or an associate broker's
21 license subject to the jurisdiction of the commission;

22 [~~(13)~~] (14) "nonresident licensee" means an
23 associate or qualifying broker holding a real estate license
24 issued by the commission and whose license application address
25 is not within the state of New Mexico;

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1 [~~(14)~~] (15) "qualifying broker" means a
2 licensed real estate broker who has qualified a proprietorship,
3 corporation, partnership or association to do business as a
4 real estate brokerage in the state of New Mexico, who
5 discharges the responsibilities specific to a qualifying broker
6 as defined by the commission and who for compensation or other
7 consideration from another:

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

12 (b) is engaged in managing property for
13 others;

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

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

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

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1 or for the purpose of referral of information concerning real
2 estate to other qualifying brokers or associate brokers;

3 [~~(15)~~] (16) "real estate" means land,
4 improvements, leaseholds and other interests in real property
5 that are less than a fee simple ownership interest, whether
6 tangible or intangible; and

7 [~~(16)~~] (17) "transaction broker" means a
8 qualifying broker, associate broker or brokerage that provides
9 real estate services without entering into an agency
10 relationship.

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

18 C. The provisions of Chapter 61, Article 29 NMSA
19 1978 do not apply to:

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

25 (2) the employees of the owner or the

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

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

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

21 (5) the services rendered by an attorney at
22 law in the performance of the attorney's duties as an attorney
23 at law;

24 (6) a person acting in the capacity of a
25 receiver, trustee in bankruptcy, administrator or executor, a

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

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

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

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

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