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AN ACT

RELATING TO REAL ESTATE BROKERS; EXEMPTING AN AUCTIONEER
WORKING UNDER THE CONTROL OF A QUALIFYING BROKER FROM THE
LICENSURE REQUIREMENTS; PROVIDING REQUIREMENTS FOR THE
AGREEMENT BETWEEN THE AUCTIONEER AND QUALIFYING BROKER.

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) "auctioneer" means a person who auctions
3 or offers to auction real property;

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

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

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

15 (8) "commercial real estate" means real
16 estate that is zoned:

17 (a) for business or commercial use by a
18 city or county; or

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

23 (9) "commission" means the New Mexico real
24 estate commission;

25 (10) "customer" means a person who uses real

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

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

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

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

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

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

1 (a) lists, sells or offers to sell real
2 estate; buys or offers to buy real estate; or negotiates the
3 purchase, sale or exchange of real estate or options on real
4 estate;

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

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

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

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

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

1 (17) "transaction broker" means a qualifying
2 broker, associate broker or brokerage that provides real
3 estate services without entering into an agency relationship.

4 B. A single act of a person in performing or
5 attempting to perform an activity described in Paragraph (15)
6 of Subsection A of this section makes the person a qualifying
7 broker. A single act of a person in performing or attempting
8 to perform an activity described in Paragraph (3) of
9 Subsection A of this section makes the person an associate
10 broker.

11 C. The provisions of Chapter 61, Article 29 NMSA
12 1978 do not apply to:

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

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

23 (3) isolated or sporadic transactions not
24 exceeding two transactions annually in which a person acts as
25 attorney-in-fact under a duly executed power of attorney

1 delivered by an owner authorizing the person to finally
2 consummate and to perform under any contract the sale,
3 leasing or exchange of real estate on behalf of the owner;
4 and the owner or attorney-in-fact has not used a power of
5 attorney for the purpose of evading the provisions of Chapter
6 61, Article 29 NMSA 1978;

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

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

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

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

24 (8) persons who deal exclusively in mineral
25 leases or the sale or purchase of mineral rights or royalties

1 in any case in which the fee to the land or the surface
2 rights are in no way involved in the transaction; or

3 (9) an auctioneer; provided that payments to
4 an auctioneer for services rendered in connection with an
5 auction shall be made to the auctioneer by a qualifying
6 broker, and prior to performing an auction of real estate,
7 the auctioneer shall enter into a transaction-specific
8 written agreement with a qualifying broker that includes:

9 (a) a description of the parties, the
10 real estate and any additional information necessary to
11 identify the specific transaction governed by the agreement;

12 (b) the terms of compensation between
13 the auctioneer and the qualifying broker;

14 (c) the effective date and definitive
15 termination date of the agreement; and

16 (d) a statement that the auctioneer
17 agrees to: 1) cooperate fully with the qualifying broker and
18 all associate brokers designated by the qualifying broker; 2)
19 conduct all contact with parties, including the general public
20 and other brokers, in association with the qualifying broker
21 or associate brokers designated by the qualifying broker; and
22 3) conduct all marketing and solicitations for business in the
23 name of the qualifying broker." _____