

HOUSE BILL 230

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

Daymon Ely

---

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

---

AN ACT

RELATING TO REAL ESTATE LICENSURE; ADDING A DEFINITION;  
AMENDING THE REAL ESTATE RECOVERY FUND ACT; CLARIFYING  
PROCEDURES; INCREASING RECOVERY LIMITS.

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.--

.219394.2AIC March 15, 2021 (1:02pm)

underscoring material = new  
[bracketed material] = delete  
Amendments: new = →bold, blue, highlight↔  
delete = →bold, red, highlight, strikethrough↔

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;

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

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

(b) is engaged in managing property for others;

underscored material = new  
[bracketed material] = delete  
Amendments: new = →bold, blue, highlight←  
delete = →bold, red, highlight, strikethrough←

underscored material = new  
[bracketed material] = delete  
Amendments: new = →bold, blue, highlight↔  
delete = →bold, red, highlight, strikethrough↔

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

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

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

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

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

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

(7) "client" means a person who has entered into an express written agreement with a brokerage for real

underscored material = new  
[bracketed material] = delete  
Amendments: new = →bold, blue, highlight←  
delete = →bold, red, highlight, strikethrough←

estate services subject to the jurisdiction of the commission;

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

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

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

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

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

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

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

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

.219394.2AIC March 15, 2021 (1:02pm)

underscoring material = new  
[bracketed material] = delete  
Amendments: new = bold, blue, highlight  
delete = bold, red, highlight, strikethrough

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

(15) "property management" means real estate services as specified by a management agreement that include marketing, showing, renting and leasing of real property; collection and disbursement of funds on behalf of the owner STBTC→or←STBTC STBTC→owners' association←STBTC ; supervision of employees and vendors; coordination of maintenance and repairs; management of tenant relations; and preparation of leases or rental agreements, financial reports and other documents. "Property management" does not mean inspections of property, repairs and maintenance incidental to the sale and marketing of property as authorized by the owner STBTC→or the management of a condominium or homeowner association←STBTC or advertising or taking reservations for vacation rental properties;

[~~(15)~~] (16) "qualifying broker" means a licensed real estate broker who has qualified a proprietorship, corporation, partnership or association to do business as a real estate brokerage in the state of New Mexico, who discharges the responsibilities specific to a qualifying broker as defined by the commission and who for compensation or other consideration from another:

.219394.2AIC March 15, 2021 (1:02pm)

underscored material = new  
[bracketed material] = delete  
Amendments: new = →bold, blue, highlight←  
delete = →bold, red, highlight, strikethrough←

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

(b) is engaged in managing property for others;

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

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

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

~~(16)~~ (17) "real estate" means land, improvements, leaseholds and other interests in real property that are less than a fee simple ownership interest, whether tangible or intangible; and

~~(17)~~ (18) "transaction broker" means a

underscored material = new  
[bracketed material] = delete  
Amendments: new = →bold, blue, highlight←  
delete = →bold, red, highlight, strikethrough←

qualifying broker, associate broker or brokerage that provides real estate services without entering into an agency relationship.

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

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

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

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

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

underscored material = new  
[bracketed material] = delete  
Amendments: new = →bold, blue, highlight←  
delete = →bold, red, highlight, strikethrough←

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

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

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

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

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

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



underscored material = new  
[bracketed material] = delete  
Amendments: new = →bold, blue, highlight←  
delete = →bold, red, highlight, strikethrough←

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

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

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

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

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

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

**SECTION 2.** Section 61-29-23 NMSA 1978 (being Laws 1980, Chapter 82, Section 4, as amended) is amended to read:

.219394.2AIC March 15, 2021 (1:02pm)

underscored material = new

[bracketed material] = delete

Amendments: new = →bold, blue, highlight↔

delete = →bold, red, highlight, strikethrough↔

"61-29-23. JUDGMENT AGAINST QUALIFYING OR ASSOCIATE  
BROKER--PETITION--REQUIREMENTS--RECOVERY LIMITATIONS.--

A. When [~~any~~] an aggrieved person claims a pecuniary loss caused by a state-licensed qualifying broker or associate broker based upon fraud, knowing or willful misrepresentation or wrongful conversion of funds entrusted to the qualifying broker or associate broker, [~~which loss arose out of any~~] involving a transaction for which a qualifying broker's or an associate broker's license is required and which arose out of or during the course of a transaction involving the sale, lease, exchange or other disposition of real estate or property management, where the cause of action arose on or after July 1, 1980, that person may, within [~~one year~~] two years after obtaining a final judgment based upon fraud, knowing or willful misrepresentation or wrongful conversion of funds entrusted to the qualifying broker or associate broker [~~and the termination of all proceedings, including appeals in connection with the judgment, file a verified petition with the commission for payment~~] from a court of competent jurisdiction, file a verified petition with the commission for recovery pursuant to the Real Estate Recovery Fund Act. The real estate recovery fund reimburses the claimant for [~~the~~] unpaid actual damages included in the judgment [~~and unpaid~~], but not more than [~~ten thousand dollars (\$10,000)~~] fifty thousand dollars (\$50,000) per judgment regardless of the number of persons

.219394.2AIC March 15, 2021 (1:02pm)

underscoring material = new  
[bracketed material] = delete  
Amendments: new = → bold, blue, highlight  
delete = → bold, red, highlight, strikethrough

aggrieved or parcels of real estate involved in the transaction. The aggregate amount recoverable by all claimants for losses ~~[caused by]~~ against any one licensee during one calendar year shall not exceed ~~[thirty thousand dollars (\$30,000)]~~ one hundred thousand dollars (\$100,000).

B. A copy of the verified petition with the judgment attached shall be served upon the commission by United States postal service certified return receipt or in the manner provided by law for service of a civil summons.

C. The commission shall serve the petition and notice of hearing on the licensee in substantially the same manner as required pursuant to the Uniform Licensing Act.

~~[G.]~~ D. The commission shall conduct a hearing on the petition after service of the petition upon the commission and the licensee. At the hearing, the petitioner shall be required to show that the petitioner:

(1) is not the spouse of the judgment debtor, the personal representative of the spouse or related to the third degree of consanguinity or affinity to the licensee whose conduct is alleged to have caused the loss;

(2) has complied with all the requirements of the Real Estate Recovery Fund Act; and

~~[(3) has obtained a judgment of the kind described in Subsection A of this section, the amount awarded and the amount owing at the date of the petition;~~

underscored material = new  
[bracketed material] = delete  
Amendments: new = →bold, blue, highlight↔  
delete = →bold, red, highlight, strikethrough↔

~~(4) has had execution issued upon the judgment and that the officer executing the writ has made a return showing that the judgment debtor has no property within the state subject to execution. If execution is levied against the property of the judgment debtor, the petitioner shall show that the amount realized on the sale was insufficient to satisfy the judgment and shall set forth the amount realized from the sale and the balance remaining due on the judgment after application of the amount realized;~~

~~(5) has made reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets liable to be sold or applied in satisfaction of the judgment, including partnership assets, licensee's estate or any bond or insurance, and that the petitioner has exercised reasonable diligence to secure payment of the judgment from the assets of the judgment debtor; and~~

~~(6)]~~ (3) has a judgment that is not

~~[(a)]~~ covered by ~~[any]~~ a bond, insurance, surety agreement or indemnity agreement

~~[(b)]~~ a loss incurred by a partner, joint venturer, employer, employee or associate of the licensee whose conduct is alleged to have caused the loss; or a corporate officer or director of a corporation in which the judgment debtor is also an officer, director or employee; or

underscoring material = new  
[bracketed material] = delete  
Amendments: new = → bold, blue, highlight  
delete = → bold, red, highlight, strikethrough

~~(c) a loss incurred by any business or other entity in which the licensee whose conduct is alleged to have caused the loss has any interest at the time of the conduct alleged to have caused the loss].~~

E. At the hearing, the licensee shall be permitted to raise all affirmative defenses."

SECTION 3. Section 61-29-24 NMSA 1978 (being Laws 1980, Chapter 82, Section 5, as amended) is amended to read:

"61-29-24. COMMISSION--[REVIEW] COMPROMISE.--Upon receipt of a petition as required by Section 61-29-23 NMSA 1978, the commission shall conduct a hearing in substantially the same manner and with the same authority as set forth in the Uniform Licensing Act [~~including Sections 61-1-9 through 61-1-11 NMSA 1978. Review of the commission's decision shall be in the manner provided by Section 61-1-20 NMSA 1978~~]. The commission may compromise a claim based upon the application of a petitioner."

SECTION 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2021.