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HOUSE BILL 472

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

EARLENE ROBERTS

AN ACT

RELATING TO THE NEW MEXICO REAL ESTATE COMMISSION; PROVIDING  
ADDITIONAL POWERS AND DUTIES.

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

Section 1. Section 61-29-4.1 NMSA 1978 (being Laws 1985,  
Chapter 89, Section 1, as amended) is amended to read:

"61-29-4.1. ADDITIONAL POWERS OF COMMISSION--CONTINUING  
EDUCATION PROGRAMS--MINIMUM REQUIREMENTS.--In addition to the  
powers and duties granted the commission under the provisions  
of Section 61-29-4 NMSA 1978:

A. the commission shall adopt regulations  
providing for continuing educational programs that offer  
courses in selling, leasing or managing residential,  
commercial and industrial property as well as courses  
reviewing basic real estate law and practice. The regulations

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1 shall require that every licensee except licensees who are  
2 sixty-five years of age or older and who have a minimum of  
3 twenty years' continuously licensed experience in the selling,  
4 leasing or managing of real property, as a condition of his  
5 license renewal, shall successfully complete thirty classroom  
6 hours of instruction every three years in courses approved by  
7 the commission. The regulations shall prescribe areas of  
8 specialty or expertise and may require that a certain part of  
9 the thirty hours of classroom instruction be devoted to  
10 courses in the area of a licensee's specialty or expertise;  
11 and

12 B. the commission may approve and promulgate forms  
13 to be used in real estate transactions, but the failure to use  
14 an approved form does not affect the validity of the  
15 transaction. "

16 Section 2. Section 61-29-12 NMSA 1978 (being Laws 1959,  
17 Chapter 226, Section 11, as amended) is amended to read:

18 "61-29-12. REFUSAL, SUSPENSION OR REVOCATION OF LICENSE  
19 FOR CAUSES ENUMERATED. -- The commission [ ~~shall have the power~~  
20 ~~to~~] may refuse a license for cause or [ ~~to~~] suspend or revoke a  
21 license at any time where the licensee has by false or  
22 fraudulent representations obtained a license or where the  
23 licensee in performing or attempting to perform any of the  
24 actions mentioned in Chapter 61, Article 29 NMSA 1978 is  
25 deemed to be guilty of:

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- 1           A. making a substantial misrepresentation;
- 2           B. pursuing a continued and flagrant course of
- 3 misrepresentation; making false promises through agents,
- 4 salespersons, advertising or otherwise; or using any trade
- 5 name or insignia of membership in any real estate organization
- 6 of which the licensee is not a member;
- 7           C. paying or receiving any rebate, profit,
- 8 compensation, [~~or~~] commission or payment of any nature to or
- 9 from any unlicensed person, except [~~his~~] direct payment to a
- 10 principal [~~or other~~] party to the transaction [~~and then only~~
- 11 ~~with his principal's written consent~~] at or subsequent to
- 12 closing;
- 13           D. representing or attempting to represent a real
- 14 estate broker other than the broker with whom he is licensed
- 15 without the express knowledge and consent of the broker;
- 16           E. failing, within a reasonable time, to account
- 17 for or to remit any money coming into his possession that
- 18 belongs to others, commingling funds of others with his own or
- 19 failing to keep such funds of others in an escrow or trustee
- 20 account or failing to furnish legible copies of all listing
- 21 and sales contracts to all parties executing them;
- 22           F. conviction in any court of competent
- 23 jurisdiction of a felony or any offense involving moral
- 24 turpitude;
- 25           G. employing or compensating directly or

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1 indirectly any person for performing any of the acts regulated  
2 by Chapter 61, Article 29 NMSA 1978 who is not a licensed  
3 broker or licensed salesperson; provided, however, that a  
4 licensed broker may pay a commission to a licensed broker of  
5 another state; provided further that the nonresident broker  
6 does not conduct in this state any of the negotiations for  
7 which ~~[a fee]~~ compensation, ~~[or]~~ commission or payment of any  
8 nature is paid except ~~[in cooperation with]~~ through a licensed  
9 broker of this state;

10 H. failing, if a broker, to place as soon after  
11 receipt as is practicably possible any deposit money or other  
12 money received by him in a real estate transaction in a  
13 custodial, trust or escrow account maintained by him in a bank  
14 or savings and loan institution or title company authorized to  
15 do business in this state, in which the funds shall be kept  
16 until the transaction is consummated or otherwise terminated,  
17 at which time a full accounting of the funds shall be made by  
18 the broker. Records relative to the deposit, maintenance and  
19 withdrawal of such funds shall contain information as may be  
20 prescribed by the rules and regulations of the commission.  
21 Nothing in this subsection shall prohibit any broker from  
22 depositing nontrust funds in an amount not to exceed the  
23 required minimum balance in each trust account so as to meet  
24 the minimum balance requirements of the bank necessary to  
25 maintain the account and avoid charges. This minimum balance

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1 deposit shall not be considered commingling and shall not be  
2 subject to levy, attachment or garnishment. This subsection,  
3 however, shall not prohibit a broker from depositing any  
4 deposit money or other money received by him in a real estate  
5 transaction with another cooperating broker who shall in turn  
6 comply with this subsection;

7 I. failing, if a salesperson, to place as soon  
8 after receipt as is practicably possible in the custody of his  
9 registered broker any deposit money or other money entrusted  
10 to him by any person dealing with him as the representative of  
11 his registered broker;

12 J. violating any provisions of Chapter 61, Article  
13 29 NMSA 1978 or any reasonable rule or regulation promulgated  
14 by the commission in the interests of the public and in  
15 conformance with the provisions of Chapter 61, Article 29 NMSA  
16 1978; or

17 K. any other conduct, whether of the same or  
18 different character from that specified in this section, that  
19 is related to dealings as a real estate broker or real estate  
20 salesperson and that constitutes or demonstrates bad faith,  
21 incompetency, untrustworthiness, impropriety, fraud,  
22 dishonesty, negligence or any unlawful act.

23 Any unlawful act or violation of any of the provisions of  
24 Chapter 61, Article 29 NMSA 1978 by any real estate  
25 salesperson, employee, partner or associate of a licensed real

1 estate broker shall not be cause for the revocation of a  
2 license of any real estate broker unless it appears to the  
3 satisfaction of the commission that the real estate broker had  
4 guilty knowledge of the unlawful act or violation. "

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3 **FORTY-THIRD LEGISLATURE**  
4 **SECOND SESSION, 1998**  
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8 **February 9, 1998**  
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11 **Mr. Speaker:**  
12

13 **Your RULES AND ORDER OF BUSINESS COMMITTEE, to**  
14 **whom has been referred**  
15

16 **HOUSE BILL 472**  
17

18  
19 **has had it under consideration and finds same to be GERMANE**  
20 **in accordance with constitutional provisions.**  
21

22 **Respectfully submitted,**  
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R. David Pederson, Chairman

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3 Adopted \_\_\_\_\_

Not Adopted \_\_\_\_\_

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(Chief Clerk)

(Chief Clerk)

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Date \_\_\_\_\_

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8 The roll call vote was 8 For 0 Against

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Yes: 8

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Excused: Nicely, Olguin, Rodella, Ryan, Sanchez, Taylor, J.G.,

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Williams, S.M

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Absent: None

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1 FORTY-THIRD LEGISLATURE

2 SECOND SESSION, 1998

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5  
6 February 17, 1998

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8 Mr. Speaker:

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10 Your BUSINESS AND INDUSTRY COMMITTEE, to whom has  
11 been referred

12  
13 HOUSE BILL 472

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15 has had it under consideration and reports same with  
16 recommendation that it DO PASS, amended as follows:

17 1. On page 3, lines 7 through 12, strike Subsection C in  
18 its entirety and insert in lieu thereof:

19  
20 "C. paying or receiving any rebate, profit,  
21 compensation, ~~commission~~ or payment of any nature to or from any  
22 unlicensed person, except direct payment to a principal party to  
23 the transaction. Before a rebate, profit, ~~commission~~,  
24 ~~commission~~ or payment of any nature is made to a foreign broker  
25 or nonresident broker, the broker shall have on file a completed  
copy of a form for foreign brokers and nonresident brokers,

1 FORTY-THIRD LEGISLATURE  
2 SECOND SESSION, 1998

3 HBIC/HB 472

Page 10

4 adopted by the commission, that includes current license  
5 information and an agreement to comply with New Mexico statutes  
6 and commission rules;".

7  
8 2. Reletter the succeeding subsections accordingly.

9  
10 3. On page 4, line 8, strike the brackets and line-  
11 through and strike "through".

12 and thence referred to the JUDICIARY COMMITTEE.

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14 Respectfully submitted,

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19 Fred Luna, Chairman  
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1 FORTY-THIRD LEGISLATURE  
2 SECOND SESSION, 1998

3 HBIC/HB 472

Page 11

4 Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

5  
6 (Chief Clerk)

(Chief Clerk)

7  
8 Date \_\_\_\_\_

9  
10 The roll call vote was 6 For 1 Against

11 Yes: 6

12 No: J. G. Taylor

13 Excused: Alwin, Corley, Lutz, Varela, Luna

14 Absent: Getty

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