

AN ACT

RELATING TO LICENSING; CREATING AND DEFINING CERTAIN  
RELATIONSHIPS BETWEEN PERSONS PURSUANT TO THE REAL ESTATE  
LICENSING LAW; REPEALING AND ENACTING SECTIONS OF THE NMSA  
1978.

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

Section 1. Section 61-29-2 NMSA 1978 (being Laws 1959, Chapter 226, Section 2, as amended) is repealed and a new Section 61-29-2 NMSA 1978 is enacted to read:

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

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

(1) "agency relationship" or "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;

(2) "broker" or "qualifying broker" means a person who for compensation or other consideration from another:

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

(c) advertises or holds himself out 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

(d) engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract under which he 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 brokers;

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

(4) "client" means a buyer, seller, landlord or tenant who has entered into an express written agreement with a brokerage for real estate services subject to the jurisdiction of the commission;

(5) "commission" means the New Mexico real estate commission created pursuant to Section 61-29-4 NMSA 1978;

(6) "customer" means a buyer, seller, landlord or tenant who uses real estate services without entering into an express written agreement with a brokerage subject to the jurisdiction of the commission;

(7) "license" means a real estate broker's license issued by the commission;

(8) "licensee" means anyone holding a valid real estate license subject to the jurisdiction of the commission;

(9) "nonagent" means a brokerage and its licensees providing real estate services to either clients by means of an express written agreement or to customers without an express written agreement;

(10) "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

(11) "real estate salesperson" means a person who for compensation or other valuable consideration is associated with or engaged under contract by a broker to participate in an activity described in Subparagraphs (a) through (d) of Paragraph (2) of this subsection or to carry on the broker's business as a whole or partial vocation.

B. A single act of a person in performing or attempting to perform an activity described in Subparagraphs (a) through (d) of Paragraph (2) of Subsection A of this section makes the person a broker. A single act of a person in performing or attempting to perform an activity described in Paragraph (11) of Subsection A of this section makes the person a real estate salesperson.

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

(1) a person who as owner or lessor performs any of the activities included in this section with reference to property owned or leased by him, the employees of the owner or lessor or the employees of a broker acting on behalf of the owner or lessor, with respect to the property owned or leased, if the acts are performed in the regular course of or incident to the management of the property and the investments, except where when the sale or offering for sale or the lease or offering for lease of the property constitutes a subdivision containing one hundred or more parcels;

(2) 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 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;

(3) 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;

(4) the services rendered by an attorney at law in the performance of his duties as an attorney at law;

(5) 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;

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

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

Section 2. A new section of Chapter 61, Article 29 NMSA 1978 is enacted to read:

"BROKERAGE RELATIONSHIPS--CREATION.--

A. For all regulated real estate transactions first executed on or after January 1, 2000, no agency relationship between a buyer, seller, landlord or tenant and a brokerage shall exist unless the buyer, seller, landlord or tenant and the brokerage agree, in writing, to the agency relationship. No type of agency relationship may be assumed by a buyer, seller, landlord, tenant or licensee, or created orally or by implication.

B. The commission shall promulgate rules governing the rights and responsibilities of clients or customers and the rights, responsibilities and duties of the brokerage in an agency relationship."

Section 3. A new section of Chapter 61, Article 29 NMSA 1978 is enacted to read:

"BROKERAGE RELATIONSHIP--DISCLOSURE.--A licensee shall give to a prospective buyer, seller, landlord or tenant at the first substantive contact a brokerage relationship disclosure in accordance with requirements established by the commission."

Section 4. A new section of Chapter 61, Article 29 NMSA 1978 is enacted to read:

"BROKERAGE NONAGENCY RELATIONSHIPS--CREATION.--

A. For all regulated real estate transactions first executed on or before January 1, 2000, a buyer, seller, landlord or tenant using real estate services without entering into an express written agreement will be a customer of the brokerage providing the real estate

services, and no agency relationship or agency duties will be imposed.

B. For all regulated real estate transactions first executed on or after January 1, 2000, a buyer, seller, landlord or tenant may enter into an express written agreement to become a client of a brokerage, without creating an agency relationship, and no agency duties will be imposed.

C. The commission shall promulgate rules governing the rights and responsibilities of clients and customers and the rights, responsibilities and duties of the brokerage in a nonagency relationship. All licensees will perform the duties of licensees as prescribed by the commission."                     

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