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SENATE BILL 45

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Joseph A. Fidel

AN ACT

RELATING TO REAL ESTATE; CLARIFYING THE RESPONSIBILITIES OF
REAL ESTATE BROKERS AND LICENSEES TO CLIENTS AND CUSTOMERS;
AMENDING AND REPEALING 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 1999,
Chapter 127, Section 1) is amended 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~~ 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

1 another:

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

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

8 (c) advertises or holds himself out as
9 being engaged in the business of buying, selling, exchanging,
10 renting, leasing, auctioning or dealing with options on real
11 estate for others as a whole or partial vocation; or

12 (d) engages in the business of charging
13 an advance fee or contracting for collection of a fee in
14 connection with a contract under which he undertakes primarily
15 to promote the sale of real estate through its listing in a
16 publication issued primarily for that purpose or for the
17 purpose of referral of information concerning real estate to
18 brokers;

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

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

underscored material = new
[bracketed material] = delete

1 (5) "commission" means the New Mexico real
2 estate commission [~~created pursuant to Section 61-29-4 NMSA~~
3 ~~1978~~];

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

8 (7) "license" means a real estate broker's
9 license or a real estate salesperson's license issued by the
10 commission;

11 (8) "licensee" means [~~anyone~~] a person holding
12 a valid real estate license subject to the jurisdiction of the
13 commission;

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

18 ~~(10)]~~ (9) "real estate" means land,
19 improvements, leaseholds and other interests in real property
20 that are less than a fee simple ownership interest, whether
21 tangible or intangible; and

22 [~~(11)]~~ (10) "real estate salesperson" means a
23 person who for compensation or other valuable consideration is
24 associated with or engaged under contract by a broker to
25 participate in an activity described in Subparagraphs (a)

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1 through (d) of Paragraph (2) of this subsection or to carry on
2 the broker's business as a whole or partial vocation.

3 B. A single act of a person in performing or
4 attempting to perform an activity described in Subparagraphs
5 (a) through (d) of Paragraph (2) of Subsection A of this
6 section makes the person a broker. A single act of a person in
7 performing or attempting to perform an activity described in
8 Paragraph [~~(11)~~] (10) of Subsection A of this section makes the
9 person a real estate salesperson.

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

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

22 (2) isolated or sporadic transactions not
23 exceeding two transactions annually in which a person acts as
24 attorney-in-fact under a duly executed power of attorney
25 delivered by an owner authorizing the person to finally

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

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

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

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

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

23 (7) persons who deal exclusively in mineral
24 leases or the sale or purchase of mineral rights or royalties
25 in any case in which the fee to the land or the surface rights

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1 are in no way involved in the transaction."

2 Section 2. Section 61-29-10.1 NMSA 1978 (being Laws 1999,
3 Chapter 127, Section 2) is amended to read:

4 "61-29-10.1. BROKERAGE RELATIONSHIPS-- CREATION. --

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

13 B. A brokerage may provide real estate services to
14 a client pursuant to an express written agreement that does not
15 create an agency relationship and no agency duties will be
16 imposed on the brokerage.

17 C. A brokerage may provide real estate services to
18 a customer without entering into an express written agreement
19 and without creating an agency relationship and no agency
20 duties will be imposed on the brokerage.

21 [~~B.-~~] D. The commission shall promulgate rules
22 governing the rights [and responsibilities] of clients or
23 customers and the rights, responsibilities and duties of [the]
24 a brokerage in [an agency relationship] those brokerage
25 relationships that are subject to the jurisdiction of the

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commission. "

Section 3. Section 61-29-10.2 NMSA 1978 (being Laws 1999, Chapter 127, Section 3) is amended to read:

"61-29-10.2. [~~BROKERAGE RELATIONSHIP~~] LICENSEE' S DUTIES- -
DISCLOSURE. - -

A. 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~~] at the time when the parties enter into an express written agreement, a list of the licensee's duties that are in accordance with requirements established by the commission.

B. Licensees shall perform all duties that are established for licensees by the commission."

Section 4. REPEAL. - - Section 61-29-10.3 NMSA 1978 (being Laws 1999, Chapter 127, Section 4, as amended) is repealed.

Section 5. EFFECTIVE DATE. - - The effective date of the provisions of this act is January 1, 2004.