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SENATE BILL 191

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Tim Eichenberg

AN ACT

RELATING TO LICENSING OF REAL ESTATE PROFESSIONALS; PROVIDING FOR THE REVOCATION OF A REAL ESTATE LICENSE OR THE DENIAL OF ISSUANCE, RENEWAL OR REINSTATEMENT OF A REAL ESTATE LICENSE OF A PERSON CONVICTED OF CERTAIN CRIMES.

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

SECTION 1. Section 61-29-12 NMSA 1978 (being Laws 1959, Chapter 226, Section 11, as amended) is amended to read:

"61-29-12. REFUSAL, SUSPENSION OR REVOCATION OF LICENSE FOR CAUSES ENUMERATED.--

A. The commission may refuse to issue a license or may suspend, revoke, limit or condition a license if the applicant or licensee has by false or fraudulent representations obtained a license or, in performing or attempting to perform any of the actions specified in Chapter

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- 1 61, Article 29 NMSA 1978, an applicant or licensee has:
- 2 (1) made a substantial misrepresentation;
- 3 (2) pursued a continued and flagrant course of
- 4 misrepresentation; made false promises through agents,
- 5 salespersons, advertising or otherwise; or used any trade name
- 6 or insignia of membership in any real estate organization of
- 7 which the licensee is not a member;
- 8 (3) paid or received a rebate, profit,
- 9 compensation or commission to or from any unlicensed person,
- 10 except the licensee's principal or other party to the
- 11 transaction, and then only with that principal's written
- 12 consent;
- 13 (4) represented or attempted to represent a
- 14 qualifying broker other than a qualifying broker with whom the
- 15 licensee is associated without the express knowledge and
- 16 consent of that qualifying broker;
- 17 (5) failed, within a reasonable time, to
- 18 account for or to remit any money coming into the licensee's
- 19 possession that belongs to others, commingled funds of others
- 20 with the licensee's own or failed to keep funds of others in an
- 21 escrow or trustee account or failed to furnish legible copies
- 22 of all listing and sales contracts to all parties executing
- 23 them;
- 24 (6) been convicted in any court of competent
- 25 jurisdiction of a felony or any offense involving moral

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1 turpitude;

2 (7) employed or compensated directly or
3 indirectly a person for performing any of the acts regulated by
4 Chapter 61, Article 29 NMSA 1978 who is not a licensed
5 qualifying broker or an associate broker; provided, however,
6 that a qualifying broker may pay a commission to a qualifying
7 broker of another state; provided further that the nonresident
8 broker shall not conduct in this state any of the negotiations
9 for which a fee, compensation or commission is paid except in
10 cooperation with a licensed qualifying broker of this state;

11 (8) failed, if a qualifying broker, to place
12 as soon after receipt as is practicably possible, after
13 securing signatures of all parties to the transaction, any
14 deposit money or other money received by the qualifying broker
15 in a real estate transaction in a custodial, trust or escrow
16 account, maintained by the qualifying broker in a bank or
17 savings and loan institution or title company authorized to do
18 business in this state, in which the funds shall be kept until
19 the transaction is consummated or otherwise terminated, at
20 which time a full accounting of the funds shall be made by the
21 qualifying broker. Records relative to the deposit,
22 maintenance and withdrawal of the funds shall contain
23 information as may be prescribed by the rules of the
24 commission. Nothing in this paragraph prohibits a qualifying
25 broker from depositing nontrust funds in an amount not to

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1 exceed the required minimum balance in each trust account so as
2 to meet the minimum balance requirements of the bank necessary
3 to maintain the account and avoid charges. The minimum balance
4 deposit shall not be considered commingling and shall not be
5 subject to levy, attachment or garnishment. This paragraph
6 does not prohibit a qualifying broker from depositing any
7 deposit money or other money received by the qualifying broker
8 in a real estate transaction with another cooperating broker
9 who shall in turn comply with this paragraph;

10 (9) failed, if an associate broker, to place
11 as soon after receipt as is practicably possible in the custody
12 of the associate broker's qualifying broker, after securing
13 signatures of all parties to the transaction, any deposit money
14 or other money entrusted to the associate broker by any person
15 dealing with the associate broker as the representative of the
16 qualifying broker;

17 (10) violated a provision of Chapter 61,
18 Article 29 NMSA 1978 or a rule promulgated by the commission;

19 (11) committed an act, whether of the same or
20 different character from that specified in this subsection,
21 that is related to dealings as a qualifying broker or an
22 associate broker and that constitutes or demonstrates bad
23 faith, incompetency, untrustworthiness, impropriety, fraud,
24 dishonesty, negligence or any unlawful act; or

25 (12) been the subject of disciplinary action

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1 as a licensee while licensed to practice real estate in another
2 jurisdiction, territory or possession of the United States or
3 another country.

4 B. The commission shall revoke a license or deny
5 issuance, renewal or reinstatement of a license if the
6 applicant or licensee has been convicted of criminal sexual
7 penetration, sexual assault of an adult or a minor or any other
8 violent sexually based felony in New Mexico or any other
9 jurisdiction or is required to register as a sex offender
10 pursuant to Chapter 29, Article 11A NMSA 1978.

11 ~~[B-]~~ C. An unlawful act or violation of Chapter 61,
12 Article 29 NMSA 1978 by an associate broker, employee, partner
13 or associate of a qualifying broker shall not be cause for the
14 revocation of a license of the qualifying broker unless it
15 appears to the satisfaction of the commission that the
16 qualifying broker had guilty knowledge of the unlawful act or
17 violation."