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SENATE BILL 561

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

INTRODUCED BY

Phil A. Griego

AN ACT

RELATING TO REAL ESTATE; PROVIDING FOR BROKER'S PRICE OPINIONS.

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.--

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,

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1 solely by means of an express written agreement, to act as a
2 fiduciary for a person and to provide real estate services that
3 are subject to the jurisdiction of the commission; in the case
4 of an associate broker, "agent" means the person who has been
5 authorized to act by that associate broker's qualifying broker;

6 (3) "associate broker" means a person who, for
7 compensation or other valuable consideration, is associated
8 with or engaged under contract by a qualifying broker to
9 participate in an activity described in Paragraph (4) of this
10 subsection or to carry on the qualifying broker's business as a
11 whole or partial vocation;

12 (4) "broker" or "qualifying broker" means a
13 person who for compensation or other consideration from
14 another:

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

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

21 (c) advertises or [~~holds himself out as~~]
22 makes any representation of being engaged in the business of
23 buying, selling, exchanging, renting, leasing, auctioning or
24 dealing with options on real estate for others as a whole or
25 partial vocation; [~~or~~]

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1 (d) engages in the business of charging
2 an advance fee or contracting for collection of a fee in
3 connection with a contract under which the broker or qualifying
4 broker undertakes primarily to promote the sale of real estate
5 through its listing in a publication issued primarily for that
6 purpose or for the purpose of referral of information
7 concerning real estate to brokers, qualifying brokers or
8 associate brokers; or

9 (e) prepares a broker's price opinion;

10 (5) "broker's price opinion" means a written
11 estimate, analysis or conclusion prepared by an active licensed
12 broker that details the probable selling price of a particular
13 piece of real property and provides a varying level of detail
14 about the property's condition and neighborhood, the local real
15 estate market and comparable sales. A broker's price opinion
16 is not an appraisal;

17 [~~(5)~~] (6) "brokerage" means a licensed
18 qualifying broker and the licensed real estate business
19 represented by the qualifying broker and its affiliated
20 licensees;

21 [~~(6)~~] (7) "brokerage relationship" means the
22 legal or contractual relationship between a person and a
23 brokerage in a real estate transaction subject to the
24 jurisdiction of the commission;

25 [~~(7)~~] (8) "client" means a buyer, seller,

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1 landlord or tenant who has entered into an express written
2 agreement with a brokerage for real estate services subject to
3 the jurisdiction of the commission;

4 ~~[(8)]~~ (9) "commission" means the New Mexico
5 real estate commission;

6 ~~[(9)]~~ (10) "customer" means a buyer, seller,
7 landlord or tenant who uses real estate services without
8 entering into an express written agreement with a brokerage
9 subject to the jurisdiction of the commission;

10 ~~[(10)]~~ (11) "license" means a qualifying
11 broker's license or an associate broker's license issued by the
12 commission;

13 ~~[(11)]~~ (12) "licensee" means a person holding
14 a valid qualifying broker's license or an associate broker's
15 license subject to the jurisdiction of the commission;

16 ~~[(12)]~~ (13) "real estate" means land,
17 improvements, leaseholds and other interests in real property
18 that are less than a fee simple ownership interest, whether
19 tangible or intangible;

20 ~~[(13)]~~ (14) "real estate salesperson" means a
21 person who, for compensation or other valuable consideration,
22 is associated with or engaged under contract by a broker to
23 participate in an activity described in Paragraph (4) of this
24 subsection or to carry on the broker's business as a whole or
25 partial vocation; and

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1 [~~(14)~~] (15) "transaction broker" means a
2 qualifying broker, associate broker or brokerage that provides
3 real estate services without entering into an agency
4 relationship.

5 B. A single act of a person in performing or
6 attempting to perform an activity described in Paragraph (4) of
7 Subsection A of this section makes the person a qualifying
8 broker. A single act of a person in performing or attempting
9 to perform an activity described in Paragraph (3) of Subsection
10 A of this section makes the person an associate broker.

11 C. The provisions of Chapter 61, Article 29 NMSA
12 1978 do not apply to:

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

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

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

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

14 (4) the services rendered by an attorney at
15 law in the performance of the attorney's duties as an attorney
16 at law;

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

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

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

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1 in any case in which the fee to the land or the surface rights
2 are in no way involved in the transaction."

3 SECTION 2. A new section of Chapter 61, Article 29 NMSA
4 1978 is enacted to read:

5 "[NEW MATERIAL] BROKER'S PRICE OPINION.--

6 A. A licensed broker may charge and collect a fee
7 for and may prepare a broker's price opinion for the following
8 persons under the following circumstances:

9 (1) an owner of real property or the legal
10 representative of the owner;

11 (2) an existing or potential seller for the
12 purposes of listing and selling real property;

13 (3) an existing or potential buyer for the
14 purposes of purchasing real property;

15 (4) a third party making decisions or
16 performing due diligence related to the potential listing,
17 offering, sale, exchange, option, lease or acquisition price of
18 real property; or

19 (5) an existing or potential lienholder;
20 provided that a broker's price opinion shall not be substituted
21 for an appraisal by a state licensed or certified real estate
22 appraiser if an appraisal is required by applicable law.

23 B. A broker shall not knowingly prepare a broker's
24 price opinion for use as an appraisal when an appraisal is
25 required by law or otherwise.

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1 C. The commission may adopt rules prescribing the
2 manner in which a broker's price opinion shall be prepared in
3 accordance with the provisions of this section."

4 **SECTION 3.** Section 61-30-3 NMSA 1978 (being Laws 1990,
5 Chapter 75, Section 3, as amended) is amended to read:

6 "61-30-3. DEFINITIONS.--As used in the Real Estate
7 Appraisers Act:

8 A. "appraisal" or "real estate appraisal" means an
9 analysis, opinion or conclusion prepared by a real estate
10 appraiser relating to the nature, quality, value or utility of
11 specified interests in or aspects of identified real estate or
12 real property, for or in expectation of compensation, and shall
13 include the following:

14 (1) a valuation, analysis, opinion or
15 conclusion prepared by a real estate appraiser that estimates
16 the value of identified real estate or real property; and

17 (2) an analysis or study of real estate or
18 real property other than estimating value;

19 B. "appraisal assignment" means an engagement for
20 which an appraiser is employed or retained to act or would be
21 perceived by third parties or the public as acting as a
22 disinterested third party in rendering an unbiased appraisal;

23 C. "appraisal foundation" means the appraisal
24 foundation incorporated as an Illinois not-for-profit
25 corporation on November 30, 1987 and to which reference is

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1 made in the federal real estate appraisal reform amendments;

2 D. "appraisal report" means any communication,
3 written or oral, of an appraisal regardless of title or
4 designation and all other reports communicating an appraisal;

5 E. "board" means the real estate appraisers
6 board;

7 F. "broker's price opinion" means a written
8 estimate, analysis or conclusion prepared by a licensed real
9 estate broker that details the probable selling price of a
10 particular piece of real property and provides a varying
11 level of detail about the property's condition and
12 neighborhood, the local real estate market and comparable
13 sales. A broker's price opinion is not an appraisal;

14 [~~F.~~] G. "certified appraisal" or "certified
15 appraisal report" means an appraisal or appraisal report
16 given or signed and certified as such by a state certified
17 real estate appraiser and shall include an indication of
18 which type of certification is held and shall be deemed to
19 represent to the public that it meets the appraisal standards
20 defined in the Real Estate Appraisers Act;

21 [~~G.~~] H. "federal real estate appraisal reform
22 amendments" means the federal Financial Institutions
23 Examination Council Act of 1978, as amended by Title 11, Real
24 Estate Appraisal Reform Amendments;

25 [~~H.~~] I. "general certificate" or "general

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1 certification" means a certificate or certification for
2 appraisals of all types of real estate issued pursuant to the
3 provisions of the Real Estate Appraisers Act and the federal
4 real estate appraisal reform amendments;

5 ~~[I.]~~ J. "real estate" or "real property" means
6 leasehold or other estate or interest in, over or under land,
7 including structures, fixtures and other improvements and
8 interests that by custom, usage or law pass with a conveyance
9 of land, though not described in a contract of sale or
10 instrument of conveyance, and includes parcels with or
11 without upper and lower boundaries and spaces that may be
12 filled with air;

13 ~~[J.]~~ K. "real estate appraiser" means any person
14 who engages in real estate appraisal activity in expectation
15 of compensation;

16 ~~[K.]~~ L. "residential certificate" or "residential
17 certification" means a certificate or certification, limited
18 to appraisals of residential real estate or residential real
19 property without regard to the complexity of the transaction,
20 issued pursuant to the provisions of the Real Estate
21 Appraisers Act and as provided under the terms of the federal
22 real estate appraisal reform amendments;

23 ~~[L.]~~ M. "residential real estate" or "residential
24 real property" means real estate designed and suited or
25 intended for use and occupancy by one to four families,

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1 including use and occupancy of manufactured housing;

2 ~~[M-]~~ N. "specialized services" means those
3 services that do not fall within the definition of an
4 appraisal assignment and may include specialized financing or
5 market analyses and feasibility studies that may incorporate
6 estimates of value or analyses, opinions or conclusions given
7 in connection with activities such as real estate brokerage,
8 mortgage banking, real estate counseling and real estate tax
9 counseling, provided that the person rendering such services
10 would not be perceived by third parties or the public as
11 acting as a disinterested third party in rendering an
12 unbiased appraisal or real estate appraisal, regardless of
13 the intention of the client and that person;

14 ~~[N-]~~ O. "state certified appraisal" means any
15 appraisal that is identified as a state certified appraisal
16 report or is in any way described as being prepared by a
17 state certified real estate appraiser;

18 ~~[O-]~~ P. "state certified real estate appraiser"
19 means a person who holds a current, valid general certificate
20 or a current, valid residential certificate issued pursuant
21 to the provisions of the Real Estate Appraisers Act;

22 ~~[P-]~~ Q. "state licensed real estate appraiser"
23 means a person who holds a current, valid license issued
24 pursuant to the provisions of the Real Estate Appraisers Act;
25 and

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1 [Q-] R. "state apprentice real estate appraiser"
2 means a person who holds a current, valid registration issued
3 pursuant to the provisions of the Real Estate Appraisers
4 Act."

5 SECTION 4. Section 61-30-10 NMSA 1978 (being Laws 1990,
6 Chapter 75, Section 10, as amended) is amended to read:

7 "61-30-10. REGISTRATION, LICENSE OR CERTIFICATION
8 REQUIRED--EXCEPTIONS.--

9 A. It is unlawful for [~~any~~] a person in this
10 state to engage or attempt to engage in the business of
11 developing or communicating real estate appraisals or
12 appraisal reports without first registering as an apprentice
13 or obtaining a license or certificate from the board under
14 the provisions of the Real Estate Appraisers Act.

15 B. No person, unless certified by the board as a
16 state certified real estate appraiser under a general
17 certification or residential certification, shall:

18 (1) assume or use [~~any~~] a title, designation
19 or abbreviation likely to create the impression of a state
20 certified real estate appraiser;

21 (2) use the term "state certified" to
22 describe or refer to [~~any~~] an appraisal or evaluation of real
23 estate prepared by [~~him~~] the person;

24 (3) assume or use any title, designation or
25 abbreviation likely to create the impression of certification

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1 as a state certified real estate appraiser firm, partnership,
2 corporation or group; or

3 (4) assume or use [~~any~~] a title, designation
4 or abbreviation likely to create the impression of
5 certification under a general certificate or describe or
6 refer to [~~any~~] an appraisal or evaluation of nonresidential
7 real estate by the term "state certified" if the preparer's
8 certification is limited to residential real estate.

9 C. A state apprentice real estate appraiser who
10 is registered but does not hold a license or certificate is
11 authorized to prepare appraisals of all types of real estate
12 or real property, provided such appraisals are not described
13 or referred to as being prepared by a "state certified real
14 estate appraiser" holding a residential or general
15 certificate or by a "state licensed real estate appraiser"
16 and provided, further, such person does not assume or use
17 [~~any~~] a title, designation or abbreviation likely to create
18 the impression of certification as a state certified real
19 estate appraiser or licensure as a state licensed real estate
20 appraiser.

21 D. A holder of a license or residential
22 certificate is authorized to prepare appraisals of
23 nonresidential real estate, provided such appraisals are not
24 described or referred to as "state certified by a general
25 certified appraiser" and provided, further, the holder of the

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1 certificate does not assume or use [~~any~~] a title, designation
2 or abbreviation likely to create the impression of general
3 certification.

4 E. To perform in federally related transactions,
5 as referenced in the federal Financial Institutions Reform,
6 Recovery and Enforcement Act, a real estate appraiser shall,
7 at a minimum, meet the requirements for licensing as
8 currently defined.

9 ~~[F. The requirement of registration, licensing or~~
10 ~~certification shall not apply to a real estate broker or~~
11 ~~salesperson who, in the ordinary course of business, gives an~~
12 ~~opinion of the price or value of real estate for the purpose~~
13 ~~of securing a listing, marketing of real property, affecting~~
14 ~~a sale, lease or exchange, conducting market analyses or~~
15 ~~rendering specialized services; provided, however, this~~
16 ~~opinion of the price or value shall not be referred to or~~
17 ~~construed as an appraisal or appraisal report and no~~
18 ~~compensation, fee or other consideration is expected or~~
19 ~~charged for such opinion, other than the real estate~~
20 ~~brokerage commission or fee for services rendered in~~
21 ~~connection with the identified real estate or real property.]~~

22 F. The requirement for registration, licensing or
23 certification as a real estate appraiser shall not apply to a
24 real estate broker who prepares a broker's price opinion. As
25 used in this subsection, the term "broker" refers to both

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1 associate and qualifying brokers. A licensed broker may
2 charge and collect a fee for and may prepare a broker's price
3 opinion for the following persons under the following
4 circumstances:

5 (1) an owner of real property or the legal
6 representative of the owner;

7 (2) an existing or potential seller for the
8 purposes of listing and selling real property;

9 (3) an existing or potential buyer for the
10 purposes of purchasing real property;

11 (4) a third party making decisions or
12 performing due diligence related to the potential listing,
13 offering, sale, exchange, option, lease or acquisition price
14 of real property; or

15 (5) an existing or potential lienholder;
16 provided that a broker's price opinion shall not be
17 substituted for an appraisal by a state licensed or certified
18 real estate appraiser if an appraisal is required by
19 applicable law.

20 G. The requirement of registration, licensing or
21 certification shall not apply to real estate appraisers of
22 the property tax division of the taxation and revenue
23 department, to a county assessor or to the county assessor's
24 employees, who as part of their duties are required to engage
25 in real estate appraisal activity as a county assessor or on

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1 behalf of the county assessor and no additional compensation
2 fee or other consideration is expected or charged for such
3 appraisal activity, other than such compensation as is
4 provided by law.

5 H. The prohibition of Subsection A of this
6 section does not apply to persons whose real estate appraisal
7 activities are limited to the appraisal of interests in
8 minerals, including oil, natural gas, liquid hydrocarbons or
9 carbon dioxide, and property held or used in connection with
10 mineral property, if that person is authorized in [~~his~~] the
11 person's state of residence to practice and is actually
12 engaged in the practice of the profession of engineering or
13 geology.

14 I. The process of analyzing, without altering, an
15 appraisal report that is part of a request for mortgage
16 credit is considered a specialized service as defined in
17 Subsection [M] N of Section 61-30-3 NMSA 1978 and is exempt
18 from the requirements of registration, licensing or
19 certification."