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AN ACT

RELATING TO REAL ESTATE BROKERS LICENSURE; AMENDING SECTIONS OF CHAPTER 61, ARTICLE 29 NMSA 1978 TO PROVIDE FOR NONRESIDENT BROKER LICENSING; INCREASING THE LIMIT ON LIABILITY INSURANCE PREMIUMS; REVISING PENALTIES FOR VIOLATION OF LICENSURE REQUIREMENTS.

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

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

"61-29-1. PROHIBITION.--It is unlawful for a person to engage in the business or act in the capacity of real estate associate broker or qualifying broker within New Mexico without a license issued by the commission. A person who engages in the business or acts in the capacity of an associate broker or a qualifying broker in New Mexico, except as otherwise provided in Section 61-29-2 NMSA 1978, with or without a New Mexico real estate broker's license, has thereby submitted to the jurisdiction of the state and to the administrative jurisdiction of the commission and is subject to all penalties and remedies available for a violation of any provision of Chapter 61, Article 29 NMSA 1978."

SECTION 2. 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.--

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

2 (1) "agency relationship" means the  
3 fiduciary relationship created solely by an express written  
4 agency agreement between a person and a brokerage,  
5 authorizing the brokerage to act as an agent for the person  
6 according to the scope of authority granted in that express  
7 written agreement for real estate services subject to the  
8 jurisdiction of the commission;

9 (2) "agent" means the brokerage authorized,  
10 solely by means of an express written agreement, to act as a  
11 fiduciary for a person and to provide real estate services  
12 that are subject to the jurisdiction of the commission; in  
13 the case of an associate broker, "agent" means the person who  
14 has been authorized to act by that associate broker's  
15 qualifying broker;

16 (3) "associate broker" means a person who,  
17 for compensation or other valuable consideration, is  
18 associated with or engaged under contract by a qualifying  
19 broker to carry on the qualifying broker's business as a  
20 whole or partial vocation, and:

21 (a) lists, sells or offers to sell real  
22 estate; buys or offers to buy real estate; or negotiates the  
23 purchase, sale or exchange of real estate or options on real  
24 estate;

25 (b) is engaged in managing property for SJC/SB 212  
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1 others;

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

4 (d) advertises or makes any  
5 representation as being engaged in the business of buying,  
6 selling, exchanging, renting, leasing, auctioning or dealing  
7 with options on real estate for others as a whole or partial  
8 vocation; or

9 (e) engages in the business of charging  
10 an advance fee or contracting for collection of a fee in  
11 connection with a contract under which the qualifying broker  
12 undertakes primarily to promote the sale of real estate  
13 through its listing in a publication issued primarily for  
14 that purpose or for the purpose of referral of information  
15 concerning real estate to other qualifying brokers or  
16 associate brokers;

17 (4) "brokerage" means a licensed qualifying  
18 broker and the licensed real estate business represented by  
19 the qualifying broker and its affiliated licensees;

20 (5) "brokerage relationship" means the legal  
21 or contractual relationship between a person and a brokerage  
22 in a real estate transaction subject to the jurisdiction of  
23 the commission;

24 (6) "client" means a person who has entered  
25 into an express written agreement with a brokerage for real

1 estate services subject to the jurisdiction of the  
2 commission;

3 (7) "commission" means the New Mexico real  
4 estate commission;

5 (8) "customer" means a person who uses real  
6 estate services without entering into an express written  
7 agreement with a brokerage subject to the jurisdiction of the  
8 commission;

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

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

15 (11) "qualifying broker" means a licensed  
16 real estate broker who has qualified a proprietorship,  
17 corporation, partnership or association to do business as a  
18 real estate brokerage in the state of New Mexico, who  
19 discharges the responsibilities specific to a qualifying  
20 broker as defined by the commission and who for compensation  
21 or other consideration from another:

22 (a) lists, sells or offers to sell real  
23 estate; buys or offers to buy real estate; or negotiates the  
24 purchase, sale or exchange of real estate or options on real  
25 estate;

1 (b) is engaged in managing property for  
2 others;

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

5 (d) advertises or makes any  
6 representation as being engaged in the business of buying,  
7 selling, exchanging, renting, leasing, auctioning or dealing  
8 with options on real estate for others as a whole or partial  
9 vocation; or

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

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

22 (13) "transaction broker" means a qualifying  
23 broker, associate broker or brokerage that provides real  
24 estate services without entering into an agency relationship.

25 B. A single act of a person in performing or

1 attempting to perform an activity described in Paragraph (11)  
2 of Subsection A of this section makes the person a qualifying  
3 broker. A single act of a person in performing or attempting  
4 to perform an activity described in Paragraph (3) of  
5 Subsection A of this section makes the person an associate  
6 broker.

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

9 (1) a person who as owner performs any of  
10 the activities included in this section with reference to  
11 property owned by the person, except when the sale or  
12 offering for sale of the property constitutes a subdivision  
13 containing one hundred or more parcels;

14 (2) the employees of the owner or the  
15 employees of a qualifying broker acting on behalf of the  
16 owner, with respect to the property owned, if the acts are  
17 performed in the regular course of or incident to the  
18 management of the property and the investments;

19 (3) isolated or sporadic transactions not  
20 exceeding two transactions annually in which a person acts as  
21 attorney-in-fact under a duly executed power of attorney  
22 delivered by an owner authorizing the person to finally  
23 consummate and to perform under any contract the sale,  
24 leasing or exchange of real estate on behalf of the owner;  
25 and the owner or attorney-in-fact has not used a power of

1 attorney for the purpose of evading the provisions of  
2 Chapter 61, Article 29 NMSA 1978;

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

10 (5) the services rendered by an attorney at  
11 law in the performance of the attorney's duties as an  
12 attorney at law;

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

18 (7) the activities of a salaried employee of  
19 a governmental agency acting within the scope of employment;  
20 or

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

25 SECTION 3. Section 61-29-4.1 NMSA 1978 (being Laws

1 1985, Chapter 89, Section 1, as amended) is amended to read:

2 "61-29-4.1. ADDITIONAL POWERS OF COMMISSION--CONTINUING  
3 EDUCATION PROGRAMS--MINIMUM REQUIREMENTS.--The commission  
4 shall adopt rules providing for continuing education courses  
5 in selling, leasing or managing residential, commercial and  
6 industrial property as well as courses in basic real estate  
7 law and practice and other courses prescribed by the  
8 commission. The regulations shall require that every  
9 licensee except licensees who were already exempted from  
10 continuing education requirements prior to July 1, 2011, as a  
11 condition of license renewal, successfully complete a minimum  
12 of thirty classroom hours of instruction every three years in  
13 courses approved by the commission. The rules may prescribe  
14 areas of specialty or expertise and may require that part of  
15 the classroom instruction be devoted to courses in the area  
16 of a licensee's specialty or expertise."

17 SECTION 4. Section 61-29-4.2 NMSA 1978 (being Laws  
18 2001, Chapter 216, Section 1, as amended) is amended to read:

19 "61-29-4.2. ADDITIONAL POWERS OF THE COMMISSION--  
20 PROFESSIONAL LIABILITY INSURANCE--MINIMUM COVERAGE.--

21 A. In addition to the powers and duties granted to  
22 the commission pursuant to the provisions of Sections 61-29-4  
23 and 61-29-4.1 NMSA 1978, the commission may adopt rules that  
24 require professional liability insurance coverage and may  
25 establish the minimum terms and conditions of coverage,

1 including limits of coverage and permitted exceptions. If  
2 adopted by the commission, the rules shall require every  
3 applicant for an active license and licensee who applies for  
4 renewal of an active license to provide the commission with  
5 satisfactory evidence that the applicant or licensee has  
6 professional liability insurance coverage that meets the  
7 minimum terms and conditions required by commission rule.

8 B. The commission is authorized to solicit sealed,  
9 competitive proposals from insurance carriers to provide a  
10 group professional liability insurance policy that complies  
11 with the terms and conditions established by commission rule.  
12 The commission may approve one or more policies that comply  
13 with the commission rules; provided that the maximum annual  
14 premium shall not exceed five hundred dollars (\$500) for a  
15 licensee, that the minimum coverage shall not be less than  
16 one hundred thousand dollars (\$100,000) for an individual  
17 claim and not less than a five-hundred-thousand-dollar  
18 (\$500,000) aggregate limit per policy and that the deductible  
19 shall not be greater than one thousand dollars (\$1,000).

20 C. Rules adopted by the commission shall permit an  
21 active licensee to satisfy any requirement for professional  
22 liability insurance coverage by purchasing an individual  
23 policy.

24 D. Rules adopted by the commission shall provide  
25 that there shall not be a requirement for a licensee to have

1 professional liability insurance coverage during a period  
2 when a group policy, as provided in Subsection B of this  
3 section, is not in effect."

4 SECTION 5. Section 61-29-9 NMSA 1978 (being Laws 1959,  
5 Chapter 226, Section 8, as amended) is amended to read:

6 "61-29-9. QUALIFICATIONS FOR LICENSE.--

7 A. Licenses shall be granted only to persons who  
8 meet the requirements for licensure prescribed by law and are  
9 deemed by the commission to be of good repute and competent  
10 to transact the business of a qualifying broker or an  
11 associate broker in a manner that safeguards the interests of  
12 the public.

13 B. An applicant for a qualifying broker's license  
14 or an associate broker's license shall be a legal resident of  
15 the United States and have reached the age of majority. Each  
16 applicant for a qualifying broker's license or an associate  
17 broker's license shall have passed the real estate broker's  
18 examination approved by the commission and shall:

19 (1) furnish the commission with certificates  
20 of completion of ninety hours of classroom instruction  
21 consisting of commission-approved thirty-hour courses in real  
22 estate principles and practice, real estate law and broker  
23 basics; or

24 (2) in the case of an out-of-state  
25 applicant, furnish the commission with a certified license

1 history from the real estate licensing jurisdiction in the  
2 state or states in which the applicant is currently or has  
3 been previously licensed as a real estate broker, or  
4 certificates of completion of those courses issued by the  
5 course sponsor or provider, certifying that the applicant has  
6 or had a license in that state and has completed the  
7 equivalent of sixty classroom hours of prelicensing education  
8 approved by that licensing jurisdiction in real estate  
9 principles and practice and real estate law. Upon receipt of  
10 such documentation, the commission may waive sixty hours of  
11 the ninety hours of prelicensing education required to take  
12 the New Mexico real estate broker's examination and may waive  
13 the national portion of the examination. The applicant shall  
14 complete the commission-approved thirty-hour broker basics  
15 class to be eligible to take the state portion of the New  
16 Mexico real estate broker's examination.

17 C. An applicant for a qualifying broker's license  
18 shall have passed the New Mexico real estate broker's  
19 examination and had an active associate broker's license or  
20 equivalent real estate license for at least two of the last  
21 five years immediately preceding application for a qualifying  
22 broker's license and shall furnish the commission with a  
23 certificate of completion of the commission-approved  
24 thirty-hour brokerage office administration course.

25 D. The commission shall require the information it SJC/SB 212  
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1 deems necessary from every applicant to determine that  
2 applicant's honesty, trustworthiness and competency."

3 SECTION 6. Section 61-29-11 NMSA 1978 (being Laws 1959,  
4 Chapter 226, Section 10, as amended) is amended to read:

5 "61-29-11. ISSUANCE, RENEWAL AND SURRENDER OF  
6 LICENSES.--

7 A. The commission shall issue to each qualified  
8 applicant a license in the form and size prescribed by the  
9 commission.

10 B. The license shall show the name and address of  
11 the licensee. An associate broker's license shall show the  
12 name of the qualifying broker by whom the associate broker is  
13 engaged. The commission shall deliver or mail the license of  
14 the associate broker to the qualifying broker by whom the  
15 associate broker is engaged, and the qualifying broker shall  
16 display the license at the brokerage from which the associate  
17 broker will be conducting real estate business on behalf of  
18 the brokerage. The license of the associate broker shall  
19 remain in the custody and control of the qualifying broker as  
20 long as the associate broker is engaged by that qualifying  
21 broker.

22 C. Any qualifying broker's or associate broker's  
23 license suspended or revoked by an order, stipulated  
24 agreement or settlement agreement approved by the commission  
25 shall be surrendered to the commission by the broker upon the

1 delivery of the order to the broker by the commission, or on  
2 the effective date of the order. All real-estate-related  
3 activity conducted under such license shall cease for the  
4 duration of the license suspension or revocation, and any  
5 associate broker licenses hanging with a qualifying broker  
6 whose license is suspended or revoked shall be automatically  
7 placed on inactive status until a new qualifying broker or a  
8 qualifying broker in charge is designated.

9 D. Every license shall be renewed every three  
10 years on or before the last day of the month following the  
11 licensee's month of birth. Upon written request for renewal  
12 by the licensee, the commission shall certify renewal of a  
13 license if there is no reason or condition that might warrant  
14 the refusal of the renewal of a license. The licensee shall  
15 provide proof of compliance with continuing education  
16 requirements and pay the renewal fee. If a licensee has not  
17 made application for renewal of license, furnished proof of  
18 compliance with continuing education requirements and paid  
19 the renewal fee by the license renewal date, the license  
20 shall expire. The commission may require a person whose  
21 license has expired to apply for a license as if the person  
22 had not been previously licensed under Chapter 61, Article 29  
23 NMSA 1978 and further require that the person be reexamined.  
24 The commission shall require a person whose license has  
25 expired to pay when the person applies for a license, in

1 addition to any other fee, a late fee. If during a period of  
2 one year from the date the license expires the person or the  
3 person's spouse is either absent from this state on active  
4 duty military service or the person is suffering from an  
5 illness or injury of such severity that the person is  
6 physically or mentally incapable of making application for a  
7 license, payment of the late fee and reexamination shall not  
8 be required by the commission if, within three months of the  
9 person's permanent return to this state or sufficient  
10 recovery from illness or injury to allow the person to make  
11 an application, the person makes application to the  
12 commission for a license. A copy of that person's or that  
13 person's spouse's military orders or a certificate from the  
14 applicant's physician shall accompany the application. A  
15 person excused by reason of active duty military service,  
16 illness or injury as provided for in this subsection may make  
17 application for a license without imposition of the late fee.  
18 All fees collected pursuant to this subsection shall be  
19 disposed of in accordance with the provisions of Section  
20 61-29-8 NMSA 1978. The revocation of a qualifying broker's  
21 license automatically suspends every associate broker's  
22 license granted to any person by virtue of association with  
23 the qualifying broker whose license has been revoked, pending  
24 a change of qualifying broker. Upon the naming of a new  
25 qualifying broker, the suspended license shall be reactivated

1 without charge if granted during the three-year renewal  
2 cycle.

3 E. A qualifying broker shall conduct brokerage  
4 business under the trade name and from the brokerage address  
5 registered with the commission. Every brokerage shall have a  
6 qualifying broker in charge. The license of the qualifying  
7 broker and each associate broker associated with that  
8 qualifying broker shall be prominently displayed in each  
9 brokerage office. The address of the office shall be  
10 designated in the qualifying broker's license, and a license  
11 issued shall not authorize the licensee to transact real  
12 estate business at any other address. In case of removal  
13 from the designated address, the licensee shall make  
14 application to the commission before the removal or within  
15 ten days thereafter, designating the new location of the  
16 licensee's office and paying the required fee, whereupon the  
17 commission shall issue a license for the new location if the  
18 new location complies with the terms of Chapter 61,  
19 Article 29 NMSA 1978. A qualifying broker shall maintain a  
20 sign at the brokerage office of such size and content as the  
21 commission prescribes.

22 F. When an associate broker is discharged or  
23 terminates association or employment with the qualifying  
24 broker with whom the associate broker is associated, the  
25 qualifying broker shall deliver or mail the associate

1 broker's license to the commission within forty-eight hours.  
2 The commission shall hold the license on inactive status. It  
3 is unlawful for an associate broker to perform any of the  
4 acts authorized by Chapter 61, Article 29 NMSA 1978 either  
5 directly or indirectly under authority of an inactive license  
6 after the associate broker's association with a qualifying  
7 broker has been terminated and the associate broker's license  
8 has been returned to the commission until the appropriate fee  
9 has been paid and the license has been reissued and  
10 reactivated by the commission."

11 SECTION 7. Section 61-29-16.1 NMSA 1978 (being Laws  
12 2005, Chapter 35, Section 15, as amended) is amended to read:

13 "61-29-16.1. NONRESIDENT BROKERS--CONSENT TO SERVICE--  
14 REFERRAL FEES.--

15 A. An associate broker or qualifying broker with a  
16 license application address that is not within the state of  
17 New Mexico shall file with the commission an irrevocable  
18 consent that lawsuits and actions may be commenced against  
19 the associate broker or qualifying broker in the proper court  
20 of any county of New Mexico in which a cause of action may  
21 arise or in which the plaintiff may reside, by service on the  
22 commission of any process or pleadings authorized by the laws  
23 of New Mexico, the consent stipulating and agreeing that such  
24 service of process or pleadings on the commission is as valid  
25 and binding as if personal service had been made upon the

1 associate broker or qualifying broker in New Mexico. Service  
2 of process or pleadings shall be served in duplicate upon the  
3 commission; one shall be filed in the office of the  
4 commission and the other immediately forwarded by certified  
5 mail to the main office of the associate broker or qualifying  
6 broker against whom the process or pleadings are directed.

7 B. When a New Mexico associate broker or  
8 qualifying broker makes a referral to or receives a referral  
9 from a nonresident broker for the purpose of receiving a fee,  
10 commission or any other consideration, the qualifying broker  
11 of the New Mexico brokerage and the nonresident broker shall  
12 execute a written, transaction-specific referral agreement at  
13 the time of the referral."

14 SECTION 8. Section 61-29-17 NMSA 1978 (being Laws 1965,  
15 Chapter 304, Section 8, as amended) is amended to read:

16 "61-29-17. PENALTY--INJUNCTIVE RELIEF.--

17 A. Any person who engages in the business or acts  
18 in the capacity of an associate broker or a qualifying broker  
19 within New Mexico without a license issued by the commission  
20 is guilty of a fourth degree felony. Any person who violates  
21 any other provision of Chapter 61, Article 29 NMSA 1978 is  
22 guilty of a misdemeanor and shall be punished by a fine of  
23 not more than five hundred dollars (\$500) or imprisonment for  
24 not more than six months, or both.

25 B. In the event any person has engaged or proposes

1 to engage in any act or practice violative of a provision of  
2 Chapter 61, Article 29 NMSA 1978, the attorney general or the  
3 district attorney of the judicial district in which the  
4 person resides or the judicial district in which the  
5 violation has occurred or will occur may, upon application of  
6 the commission, maintain an action in the name of the state  
7 to prosecute the violation or to enjoin the proposed act or  
8 practice.

9 C. In any action brought under Subsection B of  
10 this section, if the court finds that a person is engaged or  
11 has willfully engaged in any act or practice violative of a  
12 provision of Sections 61-29-1 through 61-29-18 NMSA 1978, the  
13 attorney general or the district attorney of the judicial  
14 district in which the person resides or the judicial district  
15 in which the violation has occurred or is occurring may, upon  
16 petition to the court, recover on behalf of the state a civil  
17 penalty not exceeding five thousand dollars (\$5,000) per  
18 violation and attorney fees and costs." \_\_\_\_\_

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