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AN ACT

RELATING TO REAL ESTATE LICENSURE; ADDING A DEFINITION;
AMENDING THE REAL ESTATE RECOVERY FUND ACT; CLARIFYING
PROCEDURES; INCREASING RECOVERY LIMITS.

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

(3) "associate broker" means a person who,

1 for compensation or other valuable consideration, is
2 associated with or engaged under contract by a qualifying
3 broker to carry on the qualifying broker's business as a
4 whole or partial vocation, and:

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

9 (b) is engaged in managing property for
10 others;

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

13 (d) advertises or makes any
14 representation as being engaged in the business of buying,
15 selling, exchanging, renting, leasing, auctioning or dealing
16 with options on real estate for others as a whole or partial
17 vocation; or

18 (e) engages in the business of charging
19 an advance fee or contracting for collection of a fee in
20 connection with a contract under which the qualifying broker
21 undertakes primarily to promote the sale of real estate
22 through its listing in a publication issued primarily for
23 that purpose or for the purpose of referral of information
24 concerning real estate to other qualifying brokers or
25 associate brokers;

1 (4) "auctioneer" means a person who auctions
2 or offers to auction real property;

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

6 (6) "brokerage relationship" means the legal
7 or contractual relationship between a person and a brokerage
8 in a real estate transaction subject to the jurisdiction of
9 the commission;

10 (7) "client" means a person who has entered
11 into an express written agreement with a brokerage for real
12 estate services subject to the jurisdiction of the
13 commission;

14 (8) "commercial real estate" means real
15 estate that is zoned:

16 (a) for business or commercial use by a
17 city or county; or

18 (b) by a city or county to allow five
19 or more multifamily units; provided that all units are
20 located on a single parcel of land with a single legal
21 description;

22 (9) "commission" means the New Mexico real
23 estate commission;

24 (10) "customer" means a person who uses real
25 estate services without entering into an express written

1 agreement with a brokerage subject to the jurisdiction of the
2 commission;

3 (11) "foreign broker" means a real estate
4 broker who does not hold a real estate license issued by the
5 commission, but who holds a current and valid real estate
6 broker's license issued by another state in the United
7 States, a province of Canada or any other sovereign nation;

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

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

14 (14) "nonresident licensee" means an
15 associate or qualifying broker holding a real estate license
16 issued by the commission and whose license application
17 address is not within the state of New Mexico;

18 (15) "property management" means real estate
19 services as specified by a management agreement that include
20 marketing, showing, renting and leasing of real property;
21 collection and disbursement of funds on behalf of the owner;
22 supervision of employees and vendors; coordination of
23 maintenance and repairs; management of tenant relations; and
24 preparation of leases or rental agreements, financial reports
25 and other documents. "Property management" does not mean

1 inspections of property, repairs and maintenance incidental
2 to the sale and marketing of property as authorized by the
3 owner or the management of a condominium or homeowner
4 association or advertising or taking reservations for
5 vacation rental properties;

6 (16) "qualifying broker" means a licensed
7 real estate broker who has qualified a proprietorship,
8 corporation, partnership or association to do business as a
9 real estate brokerage in the state of New Mexico, who
10 discharges the responsibilities specific to a qualifying
11 broker as defined by the commission and who for compensation
12 or other consideration from another:

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

17 (b) is engaged in managing property for
18 others;

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

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

1 (e) 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 qualifying broker
4 undertakes primarily to promote the sale of real estate
5 through its listing in a publication issued primarily for
6 that purpose or for the purpose of referral of information
7 concerning real estate to other qualifying brokers or
8 associate brokers;

9 (17) "real estate" means land, improvements,
10 leaseholds and other interests in real property that are less
11 than a fee simple ownership interest, whether tangible or
12 intangible; and

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

16 B. A single act of a person in performing or
17 attempting to perform an activity described in Paragraph (16)
18 of Subsection A of this section makes the person a qualifying
19 broker. A single act of a person in performing or attempting
20 to perform an activity described in Paragraph (3) of
21 Subsection A of this section makes the person an associate
22 broker.

23 C. The provisions of Chapter 61, Article 29 NMSA
24 1978 do not apply to:

25 (1) a person who as owner performs any of

1 the activities included in this section with reference to
2 property owned by the person, except when the sale or
3 offering for sale of the property constitutes a subdivision
4 containing one hundred or more parcels;

5 (2) the employees of the owner or the
6 employees of a qualifying broker acting on behalf of the
7 owner, with respect to the property owned, if the acts are
8 performed in the regular course of or incident to the
9 management of the property and the investments;

10 (3) isolated or sporadic transactions not
11 exceeding two transactions annually in which a person acts as
12 attorney-in-fact under a duly executed power of attorney
13 delivered by an owner authorizing the person to finally
14 consummate and to perform under any contract the sale,
15 leasing or exchange of real estate on behalf of the owner;
16 and the owner or attorney-in-fact has not used a power of
17 attorney for the purpose of evading the provisions of Chapter
18 61, Article 29 NMSA 1978;

19 (4) transactions in which a person acts as
20 attorney-in-fact under a duly executed power of attorney
21 delivered by an owner related to the attorney-in-fact within
22 the fourth degree of consanguinity or closer, authorizing the
23 person to finally consummate and to perform under any
24 contract for the sale, leasing or exchange of real estate on
25 behalf of the owner;

1 (5) the services rendered by an attorney at
2 law in the performance of the attorney's duties as an
3 attorney at law;

4 (6) a person acting in the capacity of a
5 receiver, trustee in bankruptcy, administrator or executor, a
6 person selling real estate pursuant to an order of any court
7 or a trustee acting under a trust agreement, deed of trust or
8 will or the regular salaried employee of a trustee;

9 (7) the activities of a salaried employee of
10 a governmental agency acting within the scope of employment;

11 (8) persons who deal exclusively in mineral
12 leases or the sale or purchase of mineral rights or royalties
13 in any case in which the fee to the land or the surface
14 rights are in no way involved in the transaction; or

15 (9) an auctioneer; provided that payments to
16 an auctioneer for services rendered in connection with an
17 auction shall be made to the auctioneer by a qualifying
18 broker, and prior to performing an auction of real estate,
19 the auctioneer shall enter into a transaction-specific
20 written agreement with a qualifying broker that includes:

21 (a) a description of the parties, the
22 real estate and any additional information necessary to
23 identify the specific transaction governed by the agreement;

24 (b) the terms of compensation between
25 the auctioneer and the qualifying broker;

1 (c) the effective date and definitive
2 termination date of the agreement; and

3 (d) a statement that the auctioneer
4 agrees to: 1) cooperate fully with the qualifying broker and
5 all associate brokers designated by the qualifying broker; 2)
6 conduct all contact with parties, including the general
7 public and other brokers, in association with the qualifying
8 broker or associate brokers designated by the qualifying
9 broker; and 3) conduct all marketing and solicitations for
10 business in the name of the qualifying broker."

11 SECTION 2. Section 61-29-23 NMSA 1978 (being Laws 1980,
12 Chapter 82, Section 4, as amended) is amended to read:

13 "61-29-23. JUDGMENT AGAINST QUALIFYING OR ASSOCIATE
14 BROKER--PETITION--REQUIREMENTS--RECOVERY LIMITATIONS.--

15 A. When an aggrieved person claims a pecuniary
16 loss caused by a state-licensed qualifying broker or
17 associate broker based upon fraud, knowing or willful
18 misrepresentation or wrongful conversion of funds entrusted
19 to the qualifying broker or associate broker, involving a
20 transaction for which a qualifying broker's or an associate
21 broker's license is required and which arose out of or during
22 the course of a transaction involving the sale, lease,
23 exchange or other disposition of real estate or property
24 management, where the cause of action arose on or after July
25 1, 1980, that person may, within two years after obtaining a

1 final judgment based upon fraud, knowing or willful
2 misrepresentation or wrongful conversion of funds entrusted
3 to the qualifying broker or associate broker from a court of
4 competent jurisdiction, file a verified petition with the
5 commission for recovery pursuant to the Real Estate Recovery
6 Fund Act. The real estate recovery fund reimburses the
7 claimant for unpaid actual damages included in the judgment,
8 but not more than fifty thousand dollars (\$50,000) per
9 judgment regardless of the number of persons aggrieved or
10 parcels of real estate involved in the transaction. The
11 aggregate amount recoverable by all claimants for losses
12 against any one licensee during one calendar year shall not
13 exceed one hundred thousand dollars (\$100,000).

14 B. A copy of the verified petition with the
15 judgment attached shall be served upon the commission by
16 United States postal service certified return receipt or in
17 the manner provided by law for service of a civil summons.

18 C. The commission shall serve the petition and
19 notice of hearing on the licensee in substantially the same
20 manner as required pursuant to the Uniform Licensing Act.

21 D. The commission shall conduct a hearing on the
22 petition after service of the petition upon the commission
23 and the licensee. At the hearing, the petitioner shall be
24 required to show that the petitioner:

25 (1) is not the spouse of the judgment

1 debtor, the personal representative of the spouse or related
2 to the third degree of consanguinity or affinity to the
3 licensee whose conduct is alleged to have caused the loss;

4 (2) has complied with all the requirements
5 of the Real Estate Recovery Fund Act; and

6 (3) has a judgment that is not covered by a
7 bond, insurance, surety agreement or indemnity agreement.

8 E. At the hearing, the licensee shall be permitted
9 to raise all affirmative defenses."

10 SECTION 3. Section 61-29-24 NMSA 1978 (being Laws 1980,
11 Chapter 82, Section 5, as amended) is amended to read:

12 "61-29-24. COMMISSION--COMPROMISE.--Upon receipt of a
13 petition as required by Section 61-29-23 NMSA 1978, the
14 commission shall conduct a hearing in substantially the same
15 manner and with the same authority as set forth in the
16 Uniform Licensing Act. The commission may compromise a claim
17 based upon the application of a petitioner."

18 SECTION 4. EFFECTIVE DATE.--The effective date of the
19 provisions of this act is July 1, 2021. _____

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