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HOUSE BILL 474

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

EARLENE ROBERTS

AN ACT

RELATING TO REAL ESTATE BROKERS; AMENDING CERTAIN SECTIONS OF
THE NMSA 1978 TO PROVIDE FOR QUALIFYING BROKER'S LICENSES AND
ASSOCIATE BROKER'S LICENSES.

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

Section 1. Section 61-29-2 NMSA 1978 (being Laws 1959,
Chapter 226, Section 2, as amended) is amended to read:

"61-29-2. DEFINITIONS AND EXCEPTIONS. - -

A. A real estate "broker", within the meaning of
Chapter 61, Article 29 NMSA 1978, [~~is~~] means a person
[~~business association or corporation~~] who for a salary, fee,
commission or valuable consideration lists, sells or offers
for sale, buys or offers to buy or negotiates the purchase or
sale or exchange of real estate or who leases or offers to
lease or rents or offers for rent or auctions or offers or

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1 attempts or agrees to auction real estate or who buys or
2 offers to buy, [~~sell~~] sells or offers to sell or otherwise
3 deals in options on real estate or advertises or holds himself
4 out as being engaged in the business of buying, selling,
5 exchanging, renting, leasing, auctioning or dealing with
6 options on any real estate or the improvement thereon for
7 others, as a whole or partial vocation. [~~The term~~] "Broker"
8 also includes any person employed by or on behalf of the owner
9 of real estate to conduct the sale, leasing or other
10 disposition thereof at a salary or fee, commission or any
11 other consideration. [~~It~~] "Broker" also includes any person
12 who engages in the business of charging an advance fee or
13 contracting for collection of a fee in connection with any
14 contract whereby he undertakes primarily to promote the sale
15 of real estate through its listing in a publication issued
16 primarily for such purpose or for referral of information
17 concerning [~~such~~] the real estate to brokers, or both. [~~The~~
18 ~~term~~] "Real estate", as used in Chapter 61, Article 29 NMSA
19 1978, [~~shall include~~] includes leaseholds and other [~~interest~~]
20 interests less than leaseholds, including rights to use
21 property. Resident managers of apartment buildings are not
22 required to be licensed, provided they do not carry on any
23 other real estate activity and do not serve as a resident
24 manager for more than one employer. "Broker", without further
25 qualification, means a qualifying broker.

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1 B. A real estate "salesperson", within the meaning
2 of Chapter 61, Article 29 NMSA 1978, [~~is any person who for a~~
3 ~~compensation or valuable consideration is associated with or~~
4 ~~engaged under contract either directly or indirectly by or on~~
5 ~~behalf of a licensed broker to participate in any activity~~
6 ~~included in Subsection A of this section or in the pursuance~~
7 ~~of such broker's business, as a whole or partial vocation]~~
8 means an associate broker.

9 C. Any one act of a person [~~business association~~
10 ~~or corporation]~~ in performing or attempting to perform an
11 activity set forth in this section shall constitute the person
12 [~~business association or corporation]~~ as a real estate broker
13 or real estate salesperson.

14 D. As used in Chapter 61, Article 29 NMSA 1978:

15 (1) "qualifying broker" means a broker who
16 has been licensed as a qualifying broker and, therefore, may:

17 (a) maintain trust accounts and trust
18 account records;

19 (b) develop office policy manuals and
20 ensure compliance;

21 (c) provide a high level of supervision
22 over licensees in the business less than two years;

23 (d) provide a limited level of
24 supervision over licensees in the business over two years; and

25 (e) make sure that all statutes and

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1 rules pertaining to actions and advertising of the office are
2 complied with; and

3 (2) "associate broker" means a person who has
4 been licensed as an associate broker and who for a
5 compensation or valuable consideration is associated with or
6 engaged under contract either directly or indirectly by or on
7 behalf of a qualifying broker to participate in any activity
8 included in Subsection A of this section or in pursuance of
9 the qualifying broker's business, as a whole or partial
10 vocation.

11 ~~[D.]~~ E. The provisions of Chapter 61, Article 29
12 NMSA 1978 shall not ~~[apply to, be construed to include, held~~
13 ~~to include or]~~ apply to:

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

25 (2) isolated or sporadic transactions not

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1 exceeding two transactions annually where a person acts as
2 attorney-in-fact under a duly executed power of attorney
3 delivered by an owner authorizing the person to finally
4 consummate and to perform under any contract the sale, leasing
5 or exchange of real estate on behalf of the owner; and the
6 owner or attorney-in-fact have not used a power of attorney
7 for the purpose of evading the provisions of Chapter 61,
8 Article 29 NMSA 1978;

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

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

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

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

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1 (7) persons who deal exclusively in mineral
2 leases or the sale or purchase of mineral rights or royalties
3 in any case in which the fee to the land or the surface rights
4 are in no way involved in the transaction."

5 Section 2. Section 61-29-9 NMSA 1978 (being Laws 1959,
6 Chapter 226, Section 8, as amended) is amended to read:

7 "61-29-9. QUALIFICATIONS FOR LICENSE. --

8 A. Licenses shall be granted only to persons who
9 are deemed by the commission to be of good repute and
10 competent to transact the business of a [~~real-estate~~]
11 qualifying broker or [~~salesperson~~] associate broker in such a
12 manner as to safeguard the interests of the public.

13 B. Each applicant for a qualifying broker's
14 license shall be a legal resident of the United States, have
15 reached the age of majority and have been an actual bona fide
16 resident of New Mexico for six months next preceding the
17 filing of application. Each applicant for a [~~real-estate~~]
18 qualifying broker's license shall:

19 (1) have performed actively as [~~a real-estate~~
20 ~~salesperson~~] an associate broker in New Mexico for at least
21 twenty-four months out of the preceding thirty-six months
22 immediately prior to filing of the application and furnish the
23 commission a certificate that [~~he~~] the applicant has completed
24 successfully ninety classroom hours of instruction in basic
25 real estate courses approved by the commission;

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1 (2) furnish the commission a certificate that
2 [he] the applicant has completed successfully one hundred
3 eighty classroom hours of instruction in basic real estate
4 courses approved by the commission;

5 (3) furnish the commission a certificate that
6 [he] the applicant is a duly licensed real estate broker in
7 good standing in another state, providing [he] the applicant
8 has completed successfully ninety classroom hours of
9 instruction in basic real estate courses approved by the
10 commission; or

11 (4) furnish the commission satisfactory proof
12 of [~~his~~] the applicant's equivalent experience in an activity
13 closely related to or associated with real estate and furnish
14 the commission a certificate that [he] the applicant has
15 completed successfully ninety classroom hours of instruction
16 in basic real estate courses approved by the commission.

17 C. Each applicant for [~~a salesperson's~~] an
18 associate broker's license shall be a legal resident of the
19 United States, have reached the age of majority and be a
20 resident of New Mexico preceding the filing of application and
21 shall furnish the commission a certificate that [he] the
22 applicant has completed successfully [~~sixty~~] one hundred
23 twenty classroom hours of instruction in basic real estate
24 courses approved by the commission.

25 D. The commission shall require such information

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1 as it may deem necessary from every applicant to determine
2 ~~[his]~~ the applicant's honesty, trustworthiness and competency.
3 Corporations, partnerships or associations shall be entitled
4 to hold a qualifying broker's license issued in the name of
5 the corporation, partnership or association, provided at least
6 one member of the partnership or association or one officer or
7 employee of a corporation who actively engages in the real
8 estate business first secures a qualifying broker's license.
9 Such license shall be issued in the name of the corporation,
10 partnership or association, naming the partner, associate,
11 officer or employee as qualifying broker for the corporation,
12 partnership or association.

13 E. The commission may, by rule, establish
14 subclassifications and criteria for associate brokers. "

15 Section 3. TEMPORARY PROVISION. --

16 A. A person licensed as a real estate salesperson
17 in good standing on the effective date of this act shall
18 receive an associate broker's license without complying with
19 the requirements of this act if, within six months of the
20 effective date, the person:

21 (1) takes and passes a transition class
22 approved by the New Mexico real estate commission; and

23 (2) passes such portion of the associate
24 broker's examination as may be required by rule of the
25 commi ssi on.

