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SENATE BILL 137

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

INTRODUCED BY

MARK L. BOITANO

AN ACT

RELATING TO THE REAL ESTATE COMMISSION; CREATING THE REAL ESTATE COMMISSION FUND; CHANGING AMOUNTS AUTHORIZED TO BE CHARGED AS FEES; CHANGING TERMINOLOGY RELATED TO CONTINUING EDUCATION; CHANGING THE SHORT TITLE PROVISION OF THE REAL ESTATE RECOVERY FUND ACT.

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

Section 1. Section 61-29-4 NMSA 1978 (being Laws 1959, Chapter 226, Section 3, as amended) is amended to read:

"61-29-4. CREATION OF COMMISSION-- POWERS AND DUTIES. --

~~[There is created]~~

A. The New Mexico real estate commission ~~[called]~~ is created and may be referred to as "the commission" in Chapter 61, Article 29 NMSA 1978. The commission ~~[shall be appointed by the governor and shall consist]~~ consists of five

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1 ~~members appointed by the governor. [who shall have been]~~
2 Members must have been residents of the state for three
3 consecutive years immediately prior to their appointment.
4 Four ~~[of whom shall have been]~~ shall be real estate brokers
5 licensed in New Mexico and one ~~[of whom]~~ shall be a ~~[member of~~
6 ~~the public]~~ natural person who has never been licensed as a
7 real estate broker or salesperson. ~~[provided]~~ Not more than
8 one member ~~[shall]~~ may be from ~~[any]~~ one county ~~[within the~~
9 ~~state]~~. The members of the commission shall serve for a
10 period of five years or until their successors are appointed
11 and qualified. Members appointed to fill vacancies shall ~~[be~~
12 ~~appointed]~~ serve for ~~[any]~~ the unexpired term. The governor
13 may remove any member for cause.

14 B. The commission ~~[shall possess all]~~ has the
15 powers and ~~[perform all the]~~ duties prescribed by Chapter 61,
16 Article 29 NMSA 1978 and ~~[as otherwise provided]~~ prescribed by
17 ~~[law, and]~~ other laws. It ~~[is expressly vested with]~~ has the
18 power ~~[and authority]~~ to make and enforce ~~[any]~~ rules ~~[and~~
19 ~~regulations]~~ to carry out the provisions of ~~[that article]~~
20 Chapter 61, Article 29 NMSA 1978. Prior to ~~[any]~~ final action
21 on any proposed changes or amendments to the rules ~~[and~~
22 ~~regulations]~~ of the commission, the commission ~~[may]~~ shall
23 publish notice of the proposed action in its official
24 publication, distribute the publication to each active
25 licensee and give the time and place for a public hearing on

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1 the proposed changes. The hearing shall be held at least
2 thirty days prior to any proposed final action. Any changes
3 or amendments to the rules [~~and regulations~~] shall be filed
4 [~~in accordance with the procedures of~~] pursuant to the State
5 Rules Act [~~and shall become effective thirty days after~~
6 ~~notification to all active licensees of the filing of the~~
7 ~~changes or amendments~~]. The commission may employ any staff
8 it deems necessary to assist in carrying out its duties and in
9 keeping its records.

10 C. The "real estate commission fund" is created in
11 the state treasury. Money received by the commission pursuant
12 to law, except money received pursuant to the Real Estate
13 Recovery Fund Act, shall be paid to the state treasurer to be
14 deposited in the fund and invested. Income from investment of
15 the real estate commission fund shall be deposited in the
16 fund. Money in the fund is appropriated to the commission to
17 be expended in carrying out its duties under and administering
18 the provisions of Chapter 61, Article 29 NMSA 1978. Balances
19 in the fund do not revert to the general fund. "

20 Section 2. Section 61-29-4.1 NMSA 1978 (being Laws 1985,
21 Chapter 89, Section 1, as amended) is amended to read:

22 "61-29-4.1. ADDITIONAL POWERS OF COMMISSION--CONTINUING
23 EDUCATION PROGRAMS--MINIMUM REQUIREMENTS.-- [~~In addition to the~~
24 ~~powers and duties granted the commission under the provisions~~
25 ~~of Section 61-29-4 NMSA 1978]~~ The commission shall adopt

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1 [regulations] rules providing for continuing educational
2 programs that offer courses in selling, leasing or managing
3 residential, commercial and industrial property as well as
4 courses reviewing basic real estate law and practice. The
5 [regulations] rules shall require that every licensee except
6 licensees who are sixty-five years of age or older and who
7 have a minimum of twenty [~~years~~] years of continuously
8 licensed experience in the selling, leasing or managing of
9 real property, as a condition of his license renewal, shall
10 successfully complete thirty [~~classroom~~] credit hours of
11 instruction every three years in courses approved by the
12 commission. The [regulations] rules shall prescribe areas of
13 specialty or expertise and may require that a certain part of
14 the thirty hours of classroom instruction be devoted to
15 courses in the area of a licensee's specialty or expertise."

16 Section 3. Section 61-29-8 NMSA 1978 (being Laws 1959,
17 Chapter 226, Section 7, as amended) is amended to read:

18 "61-29-8. LICENSE FEES--DISPOSITION. --

19 A. The following fees shall be charged by the
20 commission and paid into the real estate commission fund:

21 (1) for each examination, a fee of sixty
22 dollars (\$60.00);

23 (2) for each broker's license issued, a fee
24 [~~of~~] not to exceed one hundred eighty dollars (\$180) and for
25 each renewal thereof, a fee [~~of~~] not to exceed one hundred

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1 eighty dollars (\$180);

2 (3) for each salesperson's license issued, a
3 fee [of] not to exceed one hundred eighty dollars (\$180) and
4 for each renewal thereof, a fee [of] not to exceed one hundred
5 eighty dollars (\$180);

6 (4) subject to the provisions of Paragraph
7 (11) of this subsection, for each change of place of business
8 or change of employer or contractual associate, a fee of
9 twenty dollars (\$20.00);

10 (5) for each duplicate license, where the
11 license is lost or destroyed and affidavit is made thereof, a
12 fee of twenty dollars (\$20.00);

13 (6) for each license history, a fee of
14 twenty-five dollars (\$25.00);

15 (7) for copying of documents by the
16 commission, a fee [~~set by the commission~~] not to exceed one
17 dollar (\$1.00) per copy;

18 (8) for each additional license law and rules
19 [~~and regulations~~] booklet, a fee [~~set by the commission~~] not
20 to exceed ten dollars (\$10.00) per booklet;

21 (9) for each additional directory of licensed
22 real estate brokers and salespersons, a fee [~~set by the~~
23 ~~commission~~] not to exceed twenty dollars (\$20.00);

24 (10) for each supplement to the directory of
25 licensed real estate brokers and salespersons, a fee [~~set by~~

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1 ~~the commission~~] not to exceed twenty dollars (\$20.00); and

2 (11) when a license must be reissued for a
3 salesperson because of change of address of the licensed
4 broker's office, death of the licensed broker when a successor
5 licensed broker is replacing the decedent and the salesperson
6 remains in the office or change of name of the office or the
7 entity of the licensed broker, the licensed broker or
8 successor licensed broker as the case may be shall pay to the
9 commission as the affected salesperson's license reissue fee
10 twenty dollars (\$20.00), but if there are eleven or more
11 affected salespersons in the licensed broker's office, the
12 total fee paid to effect reissuance of all of those licenses
13 shall not exceed two hundred dollars (\$200).

14 B. All fees ~~[set]~~ charged by the commission shall
15 be set by rule ~~[or regulation and only after all requirements~~
16 ~~have been met as prescribed by Chapter 61, Article 29 NMSA~~
17 ~~1978. Any changes or amendments to the rules and regulations~~
18 ~~shall be filed in accordance with the provisions of the State~~
19 ~~Rules Act].~~

20 C. The commission shall deposit all money received
21 by it from fees in accordance with the provisions of Chapter
22 61, Article 29 NMSA 1978 with the state treasurer, who shall
23 keep that money in ~~[a separate fund to be known as]~~ the "real
24 estate commission fund", and money so deposited in that fund
25 is appropriated for the purpose of carrying out the provisions

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1 of Chapter 61, Article 29 NMSA 1978 or to maintain the real
2 estate recovery fund as required by the Real Estate Recovery
3 Fund Act and shall be paid out of the fund upon the vouchers
4 of the president and secretary of the commission; provided
5 that the total fees and charges collected and paid into the
6 state treasury and any money so deposited shall be expended
7 only for the purposes authorized by Chapter 61, Article 29
8 NMSA 1978.

9 D. The commission shall by [~~regulation~~] rule
10 provide for a proportionate refund of the license issuance fee
11 or the license renewal fee if the license is issued or renewed
12 for a period of [~~two or~~] three years pursuant to Section
13 61-29-11 NMSA 1978 and is terminated with more than one year
14 remaining. "

15 Section 4. Section 61-29-12 NMSA 1978 (being Laws 1959,
16 Chapter 226, Section 11, as amended) is amended to read:

17 "61-29-12. REFUSAL, SUSPENSION OR REVOCATION OF LICENSE
18 FOR CAUSES ENUMERATED. --

19 A. The commission [~~shall have the power to~~] may
20 refuse [~~a license for cause or to~~] to issue, suspend or revoke
21 a license [~~at any time where~~] if the licensee has [~~by false or~~
22 ~~fraudulent representations~~] obtained a license by false or
23 fraudulent representations or [~~where the licensee~~] in
24 performing or attempting to perform any of the actions
25 [~~mentioned~~] specified in Chapter 61, Article 29 NMSA 1978 [~~is~~

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1 ~~deemed to be guilty of~~ has:

2 [A.—~~making~~] (1) made a substantial
3 ~~misrepresentation~~;

4 [B.—~~pursuing~~] (2) pursued a continued and
5 flagrant course of ~~misrepresentation~~; [~~making~~] made false
6 promises through agents, salespersons, advertising or
7 otherwise; or [~~using~~] used any trade name or insignia of
8 membership in any real estate organization of which the
9 licensee is not a ~~member~~;

10 [C.—~~paying~~] (3) paid or [~~receiving~~] received
11 any rebate, profit, ~~compensation~~ or ~~commission~~ to or from any
12 unlicensed person except his principal or other party to the
13 transaction, and then only with his principal's written
14 consent;

15 [D.—~~representing~~] (4) represented or
16 [~~attempting~~] attempted to represent a real estate broker other
17 than the broker with whom he is licensed without the express
18 knowledge and consent of [~~the~~] that broker;

19 [E.—~~failing~~] (5) failed within a reasonable
20 time to account for or to remit any ~~money~~ coming into his
21 possession that belongs to others, [~~commingling~~] commingled
22 funds of others with his own or [~~failing~~] failed to keep
23 [~~such~~] funds of others in an escrow or trustee account or
24 [~~failing~~] failed to furnish legible copies of all listing and
25 sales contracts to all parties executing them;

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1 [~~F.—conviction~~] (6) been convicted in any
2 court of competent jurisdiction of a felony or [~~any~~] an
3 offense involving moral turpitude;

4 [~~G.—employing~~] (7) employed or
5 [~~compensating~~] compensated directly or indirectly [~~any~~] a
6 person for performing any of the acts regulated by Chapter 61,
7 Article 29 NMSA 1978 [~~who is~~] if that person was not a
8 licensed broker or licensed salesperson [~~provided, however,~~
9 ~~that~~] at the time of employment or compensation; except a
10 licensed broker may pay a commission to a [~~licensed~~] broker
11 [~~of~~] licensed in another state [~~provided further that~~] but the
12 nonresident broker [~~does~~] shall not conduct in this state any
13 of the negotiations for which a fee, compensation or
14 commission is paid except in cooperation with a licensed
15 broker of this state;

16 [~~H.—failing~~] (8) if a broker, failed to
17 place as soon after receipt as is practicably possible any
18 deposit money or other money received by him in a real estate
19 transaction in a custodial, trust or escrow account maintained
20 by him in a bank or savings and loan institution or title
21 company authorized to do business in this state, in which the
22 funds shall be kept until the transaction is consummated or
23 otherwise terminated, at which time a full accounting of the
24 funds shall be made by the broker. Records relative to the
25 deposit, maintenance and withdrawal of [~~such~~] those funds

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1 shall contain information as may be prescribed by the rules
2 [~~and regulations~~] of the commission. Nothing in this
3 subsection [~~shall prohibit any~~] prohibits a broker from
4 depositing nontrust funds in an amount not to exceed the
5 required minimum balance in each trust account so as to meet
6 the minimum balance requirements of the bank necessary to
7 maintain the account and avoid charges. This minimum balance
8 deposit shall not be considered commingling and shall not be
9 subject to levy, attachment or garnishment. This subsection
10 [~~however, shall~~] does not prohibit a broker from depositing
11 any deposit money or other money received by him in a real
12 estate transaction with another cooperating broker who shall
13 in turn comply with this subsection;

14 [~~I. failing~~] (9) if a salesperson, failed to
15 place as soon after receipt as is practicably possible in the
16 custody of his registered broker any deposit money or other
17 money entrusted to him by any person dealing with him as the
18 representative of his registered broker;

19 [~~J. violating any provisions~~] (10) violated
20 a provision of Chapter 61, Article 29 NMSA 1978 or [~~any~~
21 ~~reasonable~~] a rule [or regulation] adopted and promulgated by
22 the commission [~~in the interests of the public and in~~
23 ~~conformance with the provisions of Chapter 61, Article 29 NMSA~~
24 ~~1978~~]; or

25 [~~K. any other conduct~~] (11) committed acts,

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1 whether of the same or different character from that specified
2 in this section, that [~~is~~] were related to his dealings as a
3 real estate broker or real estate salesperson and that
4 [~~constitutes~~] constituted or [~~demonstrates~~] demonstrated bad
5 faith, incompetency, untrustworthiness, impropriety, fraud,
6 dishonesty, negligence or [~~any~~] an unlawful act.

7 [~~Any~~] B. An unlawful act or violation of [~~any of~~
8 ~~the provisions~~] a provision of Chapter 61, Article 29 NMSA
9 1978 by any real estate salesperson, employee, partner or
10 associate of a licensed real estate broker shall not be cause
11 for the revocation of a license of any real estate broker
12 unless it appears to the satisfaction of the commission that
13 the real estate broker had guilty knowledge of the unlawful
14 act or violation. "

15 Section 5. Section 61-29-20 NMSA 1978 (being Laws 1980,
16 Chapter 82, Section 1) is amended to read:

17 "61-29-20. SHORT TITLE. -- Sections [~~1 through 10 of this~~
18 ~~act~~] 61-29-20 through 61-29-29 NMSA 1978 may be cited as the
19 "Real Estate Recovery Fund Act". "

20 Section 6. EFFECTIVE DATE. -- The effective date of the
21 provisions of this act is July 1, 1998.

1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998
3
4
5

6 January 28, 1998
7

8 Mr. President:
9

10 Your COMMITTEES' COMMITTEE, to whom has been referred
11

12 SENATE BILL 137
13

14 has had it under consideration and finds same to be GERMANE,
15 pursuant to Senate Executive Message No. 17, and thence referred to
16 the CORPORATIONS & TRANSPORTATION COMMITTEE.
17

18
19 Respectfully submitted,
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25 _____
Manny M. Aragon, Chairman

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(Chief Clerk)

(Chief Clerk)

Date _____

S0137CC1

1 FORTY-THIRD LEGISLATURE

2 SECOND SESSION, 1998

3
4
5 February 3, 1998

6
7 Mr. President:

8
9 Your CORPORATIONS & TRANSPORTATION COMMITTEE, to whom
10 has been referred

11
12 SENATE BILL 137

13
14 has had it under consideration and reports same with recommendation
15 that it DO PASS, and thence referred to the FINANCE COMMITTEE.

16
17 Respectfully submitted,

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23 Roman M. Maes, III, Chairman
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Adopted _____ Not Adopted _____
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Date _____

The roll call vote was 6 For 0 Against

Yes: 6

No: 0

Excused: Gri ego, McKi bben, Robinson, Maes

Absent: None

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1 FORTY-THIRD LEGISLATURE

2 SECOND SESSION, 1998

3
4
5 February 3, 1998

6
7 Mr. President:

8
9 Your CORPORATIONS & TRANSPORTATION COMMITTEE, to whom
10 has been referred

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12 SENATE BILL 137

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14 has had it under consideration and reports same with recommendation
15 that it DO PASS, and thence referred to the FINANCE COMMITTEE.

16
17 Respectfully submitted,

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23 Roman M. Maes, III, Chairman
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Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

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Date _____

The roll call vote was 6 For 0 Against

Yes: 6

No: 0

Excused: Gri ego, McKi bben, Robinson, Maes

Absent: None

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1 FORTY-THIRD LEGISLATURE

2 SECOND SESSION, 1998

3
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5
6 February 9, 1998

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8 Mr. President:

9
10 Your FINANCE COMMITTEE, to whom has been referred

11
12 SENATE BILL 137

13
14 has had it under consideration and reports same with recommendation
15 that it DO PASS.

16
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18 Respectfully submitted,

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22 _____
23 Ben D. Altamirano, Chairman
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Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

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Date _____

The roll call vote was 6 For 0 Against

Yes: 6

No: None

Excused: Aragon, Carraro, Ingle, McKibben, Smith

Absent: None

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1
2 **FORTY-THIRD LEGISLATURE**
3 **SECOND SESSION, 1998**
4
5
6

7 **February 14, 1998**
8

9
10 **Mr. Speaker:**

11 **Your BUSINESS AND INDUSTRY COMMITTEE, to whom has been**
12 **referred**

13
14 **SENATE BILL 137**
15

16 **has had it under consideration and reports same with**
17 **recommendation that it DO PASS, and thence referred to the**
18 **APPROPRIATIONS AND FINANCE COMMITTEE.**

19 **Respectfully submitted,**
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22
23 _____
24 **Fred Luna, Chairman**
25

1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998

3 HBIC/SB 137

Page 21

4 Adopted _____ Not Adopted _____
5 (Chief Clerk) (Chief Clerk)

6
7 Date _____

8
9 The roll call vote was 8 For 0 Against

10 Yes: 8

11 Excused: Hobbs, Olguin, J. G. Taylor, Varela

12 Absent: Getty

13
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