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AN ACT

RELATING TO PROFESSIONAL LICENSES; AMENDING AND ENACTING
SECTIONS OF CHAPTER 61, ARTICLE 29 NMSA 1978 TO PROVIDE FOR
FOREIGN BROKERS ACTING AS QUALIFYING OR ASSOCIATE BROKERS
WITH RESPECT TO COMMERCIAL REAL ESTATE IN NEW MEXICO.

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

1 (a) lists, sells or offers to sell real
2 estate; buys or offers to buy real estate; or negotiates the
3 purchase, sale or exchange of real estate or options on real
4 estate;

5 (b) is engaged in managing property for
6 others;

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

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

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

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

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

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

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

3 (7) "commercial real estate" means real
4 estate that is zoned:

5 (a) for business or commercial use by a
6 city or county; or

7 (b) by a city or county to allow five
8 or more multifamily units; provided that all units are
9 located on a single parcel of land with a single legal
10 description;

11 (8) "commission" means the New Mexico real
12 estate commission;

13 (9) "customer" means a person who uses real
14 estate services without entering into an express written
15 agreement with a brokerage subject to the jurisdiction of the
16 commission;

17 (10) "foreign broker" means a real estate
18 broker who does not hold a real estate license issued by the
19 commission, but who holds a current and valid real estate
20 broker's license issued by another state in the United
21 States, a province of Canada or any other sovereign nation;

22 (11) "license" means a qualifying broker's
23 license or an associate broker's license issued by the
24 commission;

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

(13) "nonresident licensee" means an
associate or qualifying broker holding a real estate license
issued by the commission and whose license application

1 address is not within the state of New Mexico;

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

9 (a) lists, sells or offers to sell real
10 estate; buys or offers to buy real estate; or negotiates the
11 purchase, sale or exchange of real estate or options on real
12 estate;

13 (b) is engaged in managing property for
14 others;

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

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

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

(15) "real estate" means land, improvements,

1 leaseholds and other interests in real property that are less
2 than a fee simple ownership interest, whether tangible or
3 intangible; and

4 (16) "transaction broker" means a qualifying
5 broker, associate broker or brokerage that provides real
6 estate services without entering into an agency relationship.

7 B. A single act of a person in performing or
8 attempting to perform an activity described in Paragraph (14)
9 of Subsection A of this section makes the person a qualifying
10 broker. A single act of a person in performing or attempting
11 to perform an activity described in Paragraph (3) of
12 Subsection A of this section makes the person an associate
13 broker.

14 C. The provisions of Chapter 61, Article 29 NMSA
15 1978 do not apply to:

16 (1) a person who as owner performs any of
17 the activities included in this section with reference to
18 property owned by the person, except when the sale or
19 offering for sale of the property constitutes a subdivision
20 containing one hundred or more parcels;

21 (2) the employees of the owner or the
22 employees of a qualifying broker acting on behalf of the
23 owner, with respect to the property owned, if the acts are
24 performed in the regular course of or incident to the
25 management of the property and the investments;

(3) isolated or sporadic transactions not
exceeding two transactions annually in which a person acts as
attorney-in-fact under a duly executed power of attorney
delivered by an owner authorizing the person to finally
consummate and to perform under any contract the sale,

1 leasing or exchange of real estate on behalf of the owner;
2 and the owner or attorney-in-fact has not used a power of
3 attorney for the purpose of evading the provisions of Chapter
4 61, Article 29 NMSA 1978;

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

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

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

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

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

SECTION 2. Section 61-29-16.1 NMSA 1978 (being Laws
2005, Chapter 35, Section 15, as amended) is amended to read:

"61-29-16.1. FOREIGN BROKERS--CONSENT TO SERVICE--
REFERRAL FEES.--

1 A. A foreign broker may act in the capacity of a
2 qualifying or associate broker with respect to commercial
3 real estate located in New Mexico; provided that prior to
4 performing any of the real estate activities of a qualifying
5 or associate broker, the foreign broker enters into a
6 transaction-specific written agreement with a New Mexico
7 qualifying broker that includes, at a minimum:

8 (1) a description of the parties, the
9 commercial real estate and any additional information
10 necessary to identify the specific transaction governed by
11 the agreement;

12 (2) the terms of compensation between the
13 foreign broker and the New Mexico qualifying broker;

14 (3) the effective date and definitive
15 termination date of the agreement; and

16 (4) a statement that the foreign broker
17 agrees to:

18 (a) cooperate fully with the New Mexico
19 qualifying broker and all associate brokers designated by the
20 New Mexico qualifying broker;

21 (b) except for the foreign broker's
22 interaction with the foreign broker's client, conduct all
23 contact with parties, including the general public and other
24 brokers, in association with the New Mexico qualifying broker
25 or associate broker designated by the New Mexico qualifying
broker;

 (c) conduct all marketing and
solicitations for business in the name of the New Mexico
qualifying broker;

 (d) timely furnish to the New Mexico

1 qualifying broker copies of all documents related to the
2 transaction that are required by the laws of New Mexico to be
3 retained by its licensees, including without limitation,
4 agency disclosure, offers, counteroffers, purchase and sale
5 contracts, leases and closing statements;

6 (e) comply with and be bound by and
7 subject to New Mexico law and the regulations of the
8 commission; and

9 (f) submit to the jurisdiction of the
10 courts of New Mexico with respect to the transaction and any
11 and all claims related thereto by service of process upon the
12 secretary of state of New Mexico and upon the appropriate
13 official of the state, province or nation of the foreign
14 broker's real estate licensure.

15 B. When a New Mexico associate broker or
16 qualifying broker makes a referral to or receives a referral
17 from a foreign broker for the purpose of receiving a fee,
18 commission or any other consideration, the qualifying broker
19 of the New Mexico brokerage and the foreign broker shall
20 execute a written, transaction-specific referral agreement at
21 the time of the referral."

22 SECTION 3. Section 61-29-17 NMSA 1978 (being Laws 1965,
23 Chapter 304, Section 8, as amended) is amended to read:

24 "61-29-17. PENALTY--INJUNCTIVE RELIEF.--

25 A. Any person who engages in the business or acts
in the capacity of an associate broker or a qualifying broker
within New Mexico without a license issued by the commission
or pursuant to Section 61-29-16.1 NMSA 1978 is guilty of a
fourth degree felony. Any person who violates any other
provision of Chapter 61, Article 29 NMSA 1978 is guilty of a

1 misdemeanor and shall be punished by a fine of not more than
2 five hundred dollars (\$500) or imprisonment for not more than
3 six months, or both.

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

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

23 SECTION 4. A new section of Chapter 61, Article 29 NMSA
24 1978 is enacted to read:

25 "NONRESIDENT LICENSEES--CONSENT TO SERVICE.--

A. A nonresident licensee shall file with the
commission an irrevocable consent that lawsuits and actions
may be commenced against the associate broker or qualifying
broker in the proper court of any county of New Mexico in
which a cause of action may arise or in which the plaintiff

1 may reside, by service on the commission of any process or
2 pleadings authorized by the laws of New Mexico, the consent
3 stipulating and agreeing that such service of process or
4 pleadings on the commission is as valid and binding as if
5 personal service had been made upon the associate broker or
6 qualifying broker in New Mexico.

7 B. Service of process or pleadings shall be served
8 in duplicate upon the commission; one shall be filed in the
9 office of the commission and the other immediately forwarded
10 by certified mail to the main office of the associate broker
11 or qualifying broker against whom the process or pleadings
12 are directed." _____

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