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,
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:

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

(b) is engaged in managing property for
others;

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

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

(e) engages in the business of charging
an advance fee or contracting for collection of a fee in
connection with a contract under which the qualifying broker
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;
(4) "auctioneer" means a person who auctions or offers to auction real property;

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

(6) "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;

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

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

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

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

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

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

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

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

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

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

(15) "property management" means real estate services as specified by a management agreement that include marketing, showing, renting and leasing of real property; collection and disbursement of funds on behalf of the owner; supervision of employees and vendors; coordination of maintenance and repairs; management of tenant relations; and preparation of leases or rental agreements, financial reports and other documents. "Property management" does not mean
inspections of property, repairs and maintenance incidental
to the sale and marketing of property as authorized by the
owner or the management of a condominium or homeowner
association or advertising or taking reservations for
vacation rental properties;

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

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

(b) is engaged in managing property for
others;

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

(d) advertises or makes any
representation as being engaged in the business of buying,
selling, exchanging, renting, leasing, auctioning or dealing
with options on real estate for others as a whole or partial
vocation; or
(e) engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract under which the qualifying broker 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;

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

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

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

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

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

(2) the employees of the owner or the
employees of a qualifying broker acting on behalf of the
owner, with respect to the property owned, if the acts are
performed in the regular course of or incident to the
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,
leasing or exchange of real estate on behalf of the owner;
and the owner or attorney-in-fact has not used a power of
attorney for the purpose of evading the provisions of Chapter
61, Article 29 NMSA 1978;

(4) transactions in which a person acts as
attorney-in-fact under a duly executed power of attorney
delivered by an owner related to the attorney-in-fact within
the fourth degree of consanguinity or closer, authorizing the
person to finally consummate and to perform under any
contract for the sale, leasing or exchange of real estate on
behalf of the owner;
(5) the services rendered by an attorney at law in the performance of the attorney's duties as an attorney at law;

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

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

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

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

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

(b) the terms of compensation between the auctioneer and the qualifying broker;
(c) the effective date and definitive termination date of the agreement; and
(d) a statement that the auctioneer agrees to: 1) cooperate fully with the qualifying broker and all associate brokers designated by the qualifying broker; 2) conduct all contact with parties, including the general public and other brokers, in association with the qualifying broker or associate brokers designated by the qualifying broker; and 3) conduct all marketing and solicitations for business in the name of the qualifying broker."

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

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

A. When an aggrieved person claims a pecuniary loss caused by a state-licensed qualifying broker or associate broker based upon fraud, knowing or willful misrepresentation or wrongful conversion of funds entrusted to the qualifying broker or associate broker, involving a transaction for which a qualifying broker's or an associate broker's license is required and which arose out of or during the course of a transaction involving the sale, lease, exchange or other disposition of real estate or property management, where the cause of action arose on or after July 1, 1980, that person may, within two years after obtaining a
final judgment based upon fraud, knowing or willful misrepresentation or wrongful conversion of funds entrusted to the qualifying broker or associate broker from a court of competent jurisdiction, file a verified petition with the commission for recovery pursuant to the Real Estate Recovery Fund Act. The real estate recovery fund reimburses the claimant for unpaid actual damages included in the judgment, but not more than fifty thousand dollars ($50,000) per judgment regardless of the number of persons aggrieved or parcels of real estate involved in the transaction. The aggregate amount recoverable by all claimants for losses against any one licensee during one calendar year shall not exceed one hundred thousand dollars ($100,000).

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

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

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

   (1) is not the spouse of the judgment
debtor, the personal representative of the spouse or related
to the third degree of consanguinity or affinity to the
licensee whose conduct is alleged to have caused the loss;

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

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

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

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

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

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