

1 SENATE BILL 124

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014**

3 INTRODUCED BY

4 Phil A. Griego

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9  
10 AN ACT

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

15  
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. Section 61-29-2 NMSA 1978 (being Laws 1999,  
18 Chapter 127, Section 1, as amended) is amended to read:

19 "61-29-2. DEFINITIONS AND EXCEPTIONS.--

20 A. As used in Chapter 61, Article 29 NMSA 1978:

21 (1) "agency relationship" means the fiduciary  
22 relationship created solely by an express written agency  
23 agreement between a person and a brokerage, authorizing the  
24 brokerage to act as an agent for the person according to the  
25 scope of authority granted in that express written agreement

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

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

9 (3) "associate broker" means a person who, for  
10 compensation or other valuable consideration, is associated  
11 with or engaged under contract by a qualifying broker to carry  
12 on the qualifying broker's business as a whole or partial  
13 vocation, and:

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

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

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

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

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1 vocation; or

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

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

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

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

19 (7) "commercial real estate" means real estate  
20 that is zoned:

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

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

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1                    [~~(7)~~] (8) "commission" means the New Mexico  
2 real estate commission;

3                    [~~(8)~~] (9) "customer" means a person who uses  
4 real estate services without entering into an express written  
5 agreement with a brokerage subject to the jurisdiction of the  
6 commission;

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

12                    [~~(9)~~] (11) "license" means a qualifying  
13 broker's license or an associate broker's license issued by the  
14 commission;

15                    [~~(10)~~] (12) "licensee" means a person holding  
16 a valid qualifying broker's license or an associate broker's  
17 license subject to the jurisdiction of the commission;

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

22                    [~~(11)~~] (14) "qualifying broker" means a  
23 licensed real estate broker who has qualified a proprietorship,  
24 corporation, partnership or association to do business as a  
25 real estate brokerage in the state of New Mexico, who

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1 discharges the responsibilities specific to a qualifying broker  
2 as defined by the commission and who for compensation or other  
3 consideration from another:

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

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

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

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

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

24 [~~(12)~~] (15) "real estate" means land,  
25 improvements, leaseholds and other interests in real property

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1 that are less than a fee simple ownership interest, whether  
2 tangible or intangible; and

3 [~~(13)~~] (16) "transaction broker" means a  
4 qualifying broker, associate broker or brokerage that provides  
5 real estate services without entering into an agency  
6 relationship.

7 B. A single act of a person in performing or  
8 attempting to perform an activity described in Paragraph [~~(11)~~]  
9 (14) of Subsection A of this section makes the person a  
10 qualifying broker. A single act of a person in performing or  
11 attempting 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 the  
17 activities included in this section with reference to property  
18 owned by the person, except when the sale or offering for sale  
19 of the property constitutes a subdivision containing one  
20 hundred or more parcels;

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

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

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

17 (5) the services rendered by an attorney at  
18 law in the performance of the attorney's duties as an attorney  
19 at law;

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

25 (7) the activities of a salaried employee of a

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1 governmental agency acting within the scope of employment; or

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

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

8 "61-29-16.1. ~~[NONRESIDENT]~~ FOREIGN BROKERS--CONSENT TO  
9 SERVICE--REFERRAL FEES.--

10 ~~[A. An associate broker or qualifying broker with a~~  
11 ~~license application address that is not within the state of New~~  
12 ~~Mexico shall file with the commission an irrevocable consent~~  
13 ~~that lawsuits and actions may be commenced against the~~  
14 ~~associate broker or qualifying broker in the proper court of~~  
15 ~~any county of New Mexico in which a cause of action may arise~~  
16 ~~or in which the plaintiff may reside, by service on the~~  
17 ~~commission of any process or pleadings authorized by the laws~~  
18 ~~of New Mexico, the consent stipulating and agreeing that such~~  
19 ~~service of process or pleadings on the commission is as valid~~  
20 ~~and binding as if personal service had been made upon the~~  
21 ~~associate broker or qualifying broker in New Mexico. Service~~  
22 ~~of process or pleadings shall be served in duplicate upon the~~  
23 ~~commission; one shall be filed in the office of the commission~~  
24 ~~and the other immediately forwarded by certified mail to the~~  
25 ~~main office of the associate broker or qualifying broker~~

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1 ~~against whom the process or pleadings are directed.]~~

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

9 (1) a description of the parties, the  
10 commercial real estate and any additional information necessary  
11 to identify the specific transaction governed by 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 agrees  
17 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

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1 broker;

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

5 (d) timely furnish to the New Mexico  
6 qualifying broker copies of all documents related to the  
7 transaction that are required by the laws of New Mexico to be  
8 retained by its licensees, including without limitation, agency  
9 disclosure, offers, counteroffers, purchase and sale contracts,  
10 leases and closing statements;

11 (e) comply with and be bound by and  
12 subject to New Mexico law and the regulations of the  
13 commission; and

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

20 B. When a New Mexico associate broker or qualifying  
21 broker makes a referral to or receives a referral from a  
22 [~~nonresident~~] foreign broker for the purpose of receiving a  
23 fee, commission or any other consideration, the qualifying  
24 broker of the New Mexico brokerage and the [~~nonresident~~]  
25 foreign broker shall execute a written, transaction-specific

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1 referral agreement at the time of the referral."

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

4 "61-29-17. PENALTY--INJUNCTIVE RELIEF.--

5 A. Any person who engages in the business or acts  
6 in the capacity of an associate broker or a qualifying broker  
7 within New Mexico without a license issued by the commission or  
8 pursuant to Section 61-29-16.1 NMSA 1978 is guilty of a fourth  
9 degree felony. Any person who violates any other provision of  
10 Chapter 61, Article 29 NMSA 1978 is guilty of a misdemeanor and  
11 shall be punished by a fine of not more than five hundred  
12 dollars (\$500) or imprisonment for not more than six months, or  
13 both.

14 B. In the event any person has engaged or proposes  
15 to engage in any act or practice violative of a provision of  
16 Chapter 61, Article 29 NMSA 1978, the attorney general or the  
17 district attorney of the judicial district in which the person  
18 resides or the judicial district in which the violation has  
19 occurred or will occur may, upon application of the commission,  
20 maintain an action in the name of the state to prosecute the  
21 violation or to enjoin the proposed act or practice.

22 C. In any action brought under Subsection B of this  
23 section, if the court finds that a person is engaged or has  
24 willfully engaged in any act or practice violative of a  
25 provision of Sections 61-29-1 through 61-29-18 NMSA 1978, the

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1 attorney general or the district attorney of the judicial  
2 district in which the person resides or the judicial district  
3 in which the violation has occurred or is occurring may, upon  
4 petition to the court, recover on behalf of the state a civil  
5 penalty not exceeding five thousand dollars (\$5,000) per  
6 violation and attorney fees and costs."

7 SECTION 4. A new section of Chapter 61, Article 29 NMSA  
8 1978 is enacted to read:

9 "[NEW MATERIAL] NONRESIDENT LICENSEES--CONSENT TO  
10 SERVICE.--

11 A. A nonresident licensee shall file with the  
12 commission an irrevocable consent that lawsuits and actions may  
13 be commenced against the associate broker or qualifying broker  
14 in the proper court of any county of New Mexico in which a  
15 cause of action may arise or in which the plaintiff may reside,  
16 by service on the commission of any process or pleadings  
17 authorized by the laws of New Mexico, the consent stipulating  
18 and agreeing that such service of process or pleadings on the  
19 commission is as valid and binding as if personal service had  
20 been made upon the associate broker or qualifying broker in New  
21 Mexico.

22 B. Service of process or pleadings shall be served  
23 in duplicate upon the commission; one shall be filed in the  
24 office of the commission and the other immediately forwarded by  
25 certified mail to the main office of the associate broker or

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1 qualifying broker against whom the process or pleadings are  
2 directed."

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