

HOUSE BILL 648

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

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AN ACT

RELATING TO REAL ESTATE LICENSURE; PROVIDING THAT A PERSON WHO DEALS EXCLUSIVELY IN WATER RIGHTS NEED NOT BE LICENSED; CREATING A COMMITTEE COMPOSED OF MEMBERS WHO ARE NOT MEMBERS OF THE NEW MEXICO REAL ESTATE COMMISSION TO REVIEW DISCIPLINARY MATTERS; ALLOWING MEMBERS TO ATTEND NEW MEXICO REAL ESTATE COMMISSION MEETINGS ELECTRONICALLY UNDER CERTAIN CIRCUMSTANCES; CLARIFYING TYPES OF CRIMES CONSIDERED FOR DISCIPLINE OR DENIAL OF A LICENSE; CREATING A SIX-MONTH LIMITATION ON BRINGING ADMINISTRATIVE AND COURT ACTIONS.

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:

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1 (1) "agency relationship" means the fiduciary
2 relationship created solely by an express written agency
3 agreement between a person and a brokerage, authorizing the
4 brokerage to act as an agent for the person according to the
5 scope of authority granted in that express written agreement
6 for real estate services subject to the jurisdiction of the
7 commission;

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

14 (3) "associate broker" means a person who, for
15 compensation or other valuable consideration, is associated
16 with or engaged under contract by a qualifying broker to carry
17 on the qualifying broker's business as a whole or partial
18 vocation, and:

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

23 (b) is engaged in managing property for
24 others;

25 (c) leases, rents or auctions or offers

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1 to lease, rent or auction real estate;

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

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

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

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

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

24 (7) "commercial real estate" means real estate
25 that is zoned:

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

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

6 (8) "commission" means the New Mexico real
7 estate commission;

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

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

17 (11) "license" means a qualifying broker's
18 license or an associate broker's license issued by the
19 commission;

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

23 (13) "nonresident licensee" means an associate
24 or qualifying broker holding a real estate license issued by
25 the commission and whose license application address is not

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1 within the state of New Mexico;

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

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1 its listing in a publication issued primarily for that purpose
2 or for the purpose of referral of information concerning real
3 estate to other qualifying brokers or associate brokers;

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

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

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

17 C. The provisions of Chapter 61, Article 29 NMSA
18 1978 do not apply to:

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

24 (2) the employees of the owner or the
25 employees of a qualifying broker acting on behalf of the owner,

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1 with respect to the property owned, if the acts are performed
2 in the regular course of or incident to the management of the
3 property and the investments;

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

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

20 (5) the services rendered by an attorney at
21 law in the performance of the attorney's duties as an attorney
22 at law;

23 (6) a person acting in the capacity of a
24 receiver, trustee in bankruptcy, administrator or executor, a
25 person selling real estate pursuant to an order of any court or

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1 a trustee acting under a trust agreement, deed of trust or will
2 or the regular salaried employee of a trustee;

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

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

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

11 "61-29-4.1. ADDITIONAL POWERS OF COMMISSION--CONTINUING
12 EDUCATION PROGRAMS--MINIMUM REQUIREMENTS.--

13 A. The commission shall adopt rules providing for
14 continuing education courses in selling, leasing or managing
15 residential, commercial and industrial property as well as
16 courses in basic real estate law and practice and other courses
17 prescribed by the commission. The regulations shall require
18 that every licensee except licensees who were already exempted
19 from continuing education requirements prior to July 1, 2011,
20 as a condition of license renewal, successfully complete a
21 minimum of thirty classroom hours of instruction every three
22 years in courses approved by the commission. The rules may
23 prescribe areas of specialty or expertise and may require that
24 part of the classroom instruction be devoted to courses in the
25 area of a licensee's specialty or expertise.

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1 B. The commission shall adopt rules providing for
2 the appointment of a committee composed of a qualifying broker
3 and an associate broker in good standing pursuant to Chapter
4 61, Article 29 NMSA 1978 and a public member. Members of the
5 commission shall not be appointed to serve on the committee.
6 The public member of the committee shall not have been licensed
7 pursuant to Chapter 69, Article 29 NMSA 1978, nor shall the
8 public member have a significant financial interest, whether
9 direct or indirect, in a business relating to real estate.

10 C. The committee appointed pursuant to Subsection B
11 of this section shall review alleged violations of Section
12 69-29-12 NMSA or of the rules of the commission. The committee
13 shall determine whether the allegation should be referred to
14 the commission. If the committee determines that the
15 allegation is not frivolous or otherwise without merit, the
16 committee shall refer the matter to the commission for review.
17 If the committee determines that the allegation is frivolous or
18 otherwise without merit, it may dismiss the matter; provided
19 that the committee may reopen any matter at any time subject to
20 the limitations provided in Section 61-29-17 NMSA 1978.

21 D. Members of the committee appointed pursuant to
22 Subsection B of this section may receive per diem and mileage
23 as provided for nonsalaried public officers in the Per Diem and
24 Mileage Act and shall receive no other compensation, perquisite
25 or allowance."

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1 SECTION 3. Section 61-29-4.4 NMSA 1978 (being Laws 2005,
2 Chapter 35, Section 6, as amended) is amended to read:

3 "61-29-4.4. ADDITIONAL POWERS OF COMMISSION--
4 FINGERPRINTING AND CRIMINAL HISTORY BACKGROUND CHECKS.--

5 A. All applicants for licensure as provided for in
6 Chapter 61, Article 29 NMSA 1978 shall:

7 (1) be required to provide fingerprints only
8 upon initial licensure on two fingerprint cards for submission
9 to the federal bureau of investigation to conduct a national
10 criminal history background check and to the department of
11 public safety to conduct a state criminal history background
12 check;

13 (2) pay the cost of obtaining the fingerprints
14 and criminal history background checks; and

15 (3) have the right to inspect or challenge the
16 validity of the records resulting from the background check if
17 the applicant is denied licensure as established by commission
18 rule.

19 B. Electronic live scans may be used for conducting
20 criminal history background checks.

21 C. Criminal history records obtained by the
22 commission pursuant to the provisions of this section are
23 confidential. The commission is authorized to use criminal
24 history records obtained from the federal bureau of
25 investigation and the department of public safety to conduct

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1 background checks on applicants for certification as provided
2 for in Chapter 61, Article 29 NMSA 1978.

3 D. Criminal history records obtained by the
4 commission pursuant to the provisions of this section shall not
5 be used for any purpose other than conducting background
6 checks. Criminal history records obtained pursuant to the
7 provisions of this section and the information contained in
8 those records shall not be released or disclosed to any other
9 person or agency, except pursuant to a court order or with the
10 written consent of the person who is the subject of the
11 records.

12 E. A person who releases or discloses the criminal
13 history records or information contained in those records in
14 violation of the provisions of this section is guilty of a
15 misdemeanor and shall be sentenced pursuant to the provisions
16 of Section 31-19-1 NMSA 1978."

17 SECTION 4. Section 61-29-6 NMSA 1978 (being Laws 1959,
18 Chapter 226, Section 5, as amended) is amended to read:

19 "61-29-6. MEETING OF THE COMMISSION.--

20 A. The commission shall meet at least once each
21 quarter-year at such time and place as may be designated by the
22 commission president, and special meetings may be held upon
23 five days' written notice to each of the commission members by
24 the commission president.

25 B. A commission member may participate in a meeting

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1 of the commission by means of a conference telephone or other
2 similar communications equipment when it is otherwise difficult
3 or impossible for the member to attend the meeting in person;
4 provided that each member participating by conference telephone
5 can be identified when speaking, all participants are able to
6 hear each other at the same time and members of the public
7 attending the meeting are able to hear any member of the
8 commission who speaks during the meeting."

9 SECTION 5. Section 61-29-12 NMSA 1978 (being Laws 1959,
10 Chapter 226, Section 11, as amended) is amended to read:

11 "61-29-12. REFUSAL, SUSPENSION OR REVOCATION OF LICENSE
12 FOR CAUSES ENUMERATED.--

13 A. The commission may refuse to issue a license or
14 may suspend, revoke, limit or condition a license if the
15 applicant or licensee has, by false or fraudulent
16 representations, obtained a license or, in performing or
17 attempting to perform any of the actions specified in Chapter
18 61, Article 29 NMSA 1978, an applicant or licensee has:

19 (1) made a substantial misrepresentation;
20 (2) pursued a continued and flagrant course of
21 misrepresentation; made false promises through agents,
22 salespersons, advertising or otherwise; or used any trade name
23 or insignia of membership in any real estate organization of
24 which the licensee is not a member;

25 (3) paid or received a rebate, profit,

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1 compensation or commission to or from any unlicensed person,
2 except the licensee's principal or other party to the
3 transaction, and then only with that principal's written
4 consent;

5 (4) represented or attempted to represent a
6 qualifying broker other than a qualifying broker with whom the
7 licensee is associated without the express knowledge and
8 consent of that qualifying broker;

9 (5) failed, within a reasonable time, to
10 account for or to remit any money coming into the licensee's
11 possession that belongs to others, commingled funds of others
12 with the licensee's own or failed to keep funds of others in an
13 escrow or trustee account or failed to furnish legible copies
14 of all listing and sales contracts to all parties executing
15 them;

16 (6) been convicted in any court of competent
17 jurisdiction of a [~~felony or any offense involving moral~~
18 ~~turpitude~~] crime that substantially relates to the
19 qualifications, functions or duties enumerated in Chapter 61,
20 Article 29 NMSA 1978;

21 (7) employed or compensated, directly or
22 indirectly, a person for performing any of the acts regulated
23 by Chapter 61, Article 29 NMSA 1978 who is not a licensed
24 qualifying broker or an associate broker; provided, however,
25 that a qualifying broker may pay a commission to a qualifying

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1 broker of another state as provided in Section 61-29-16.1 NMSA
2 1978;

3 (8) failed, if a qualifying broker, to place
4 as soon after receipt as is practicably possible, after
5 securing signatures of all parties to the transaction, any
6 deposit money or other money received by the qualifying broker
7 in a real estate transaction in a custodial, trust or escrow
8 account, maintained by the qualifying broker in a bank or
9 savings and loan institution or title company authorized to do
10 business in this state, in which the funds shall be kept until
11 the transaction is consummated or otherwise terminated, at
12 which time a full accounting of the funds shall be made by the
13 qualifying broker. Records relative to the deposit,
14 maintenance and withdrawal of the funds shall contain
15 information as may be prescribed by the rules of the
16 commission. Nothing in this paragraph prohibits a qualifying
17 broker from depositing nontrust funds in an amount not to
18 exceed the required minimum balance in each trust account so as
19 to meet the minimum balance requirements of the bank necessary
20 to maintain the account and avoid charges. The minimum balance
21 deposit shall not be considered commingling and shall not be
22 subject to levy, attachment or garnishment. This paragraph
23 does not prohibit a qualifying broker from depositing any
24 deposit money or other money received by the qualifying broker
25 in a real estate transaction with another cooperating broker

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1 who shall in turn comply with this paragraph;

2 (9) failed, if an associate broker, to place
3 as soon after receipt as is practicably possible in the custody
4 of the associate broker's qualifying broker, after securing
5 signatures of all parties to the transaction, any deposit money
6 or other money entrusted to the associate broker by any person
7 dealing with the associate broker as the representative of the
8 qualifying broker;

9 (10) violated a provision of Chapter 61,
10 Article 29 NMSA 1978 or a rule promulgated by the commission;

11 (11) committed an act, whether of the same or
12 different character from that specified in this subsection,
13 that is related to dealings as a qualifying broker or an
14 associate broker and that constitutes or demonstrates bad
15 faith, incompetency, untrustworthiness, impropriety, fraud,
16 dishonesty, negligence or any unlawful act; or

17 (12) been the subject of disciplinary action
18 as a licensee while licensed to practice real estate in another
19 jurisdiction, territory or possession of the United States or
20 another country.

21 B. An unlawful act or violation of Chapter 61,
22 Article 29 NMSA 1978 by an associate broker, employee, partner
23 or associate of a qualifying broker shall not be cause for the
24 revocation of a license of the qualifying broker unless it
25 appears to the satisfaction of the commission that the

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1 qualifying broker had guilty knowledge of the unlawful act or
2 violation."

3 SECTION 6. Section 61-29-17 NMSA 1978 (being Laws 1965,
4 Chapter 304, Section 8, as amended) is amended to read:

5 "61-29-17. PENALTY--INJUNCTIVE RELIEF--LIMITATIONS---

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

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

23 C. In any action brought under Subsection B of this
24 section, if the court finds that a person is engaged or has
25 willfully engaged in any act or practice violative of a

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1 provision of Sections 61-29-1 through 61-29-18 NMSA 1978, the
2 attorney general or the district attorney of the judicial
3 district in which the person resides or the judicial district
4 in which the violation has occurred or is occurring may, upon
5 petition to the court, recover on behalf of the state a civil
6 penalty not exceeding five thousand dollars (\$5,000) per
7 violation and attorney fees and costs.

8 D. A prosecution action pursuant to this section or
9 an action to suspend, revoke, limit or condition a license
10 pursuant to Section 61-29-12 NMSA 1978 shall not be initiated
11 later than six months after the discovery by the commission of
12 the conduct that would be the basis for the action."