

HOUSE BILL 230

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

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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

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1 commission;

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

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

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

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

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

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

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

8 (4) "auctioneer" means a person who auctions
9 or offers to auction real property;

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

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

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

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

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

24 (b) by a city or county to allow five or
25 more multifamily units; provided that all units are located on

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1 a single parcel of land with a single legal description;

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

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

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

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

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

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

23 (15) "property management" means real estate
24 services as specified by a management agreement that include
25 marketing, showing, renting and leasing of real property;

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1 collection and disbursement of funds on behalf of the owner or
2 owners' association; supervision of employees and vendors;
3 coordination of maintenance and repairs; management of tenant
4 relations; and preparation of leases or rental agreements,
5 financial reports and other documents. "Property management"
6 does not mean inspections of property, repairs and maintenance
7 incidental to the sale and marketing of property as authorized
8 by the owner or advertising or taking reservations for vacation
9 rental properties;

10 [~~(15)~~] (16) "qualifying broker" means a
11 licensed real estate broker who has qualified a proprietorship,
12 corporation, partnership or association to do business as a
13 real estate brokerage in the state of New Mexico, who
14 discharges the responsibilities specific to a qualifying broker
15 as defined by the commission and who for compensation or other
16 consideration from another:

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

21 (b) is engaged in managing property for
22 others;

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

25 (d) advertises or makes any

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1 representation as being engaged in the business of buying,
2 selling, exchanging, renting, leasing, auctioning or dealing
3 with options on real estate for others as a whole or partial
4 vocation; or

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

12 [~~(16)~~] (17) "real estate" means land,
13 improvements, leaseholds and other interests in real property
14 that are less than a fee simple ownership interest, whether
15 tangible or intangible; and

16 [~~(17)~~] (18) "transaction broker" means a
17 qualifying broker, associate broker or brokerage that provides
18 real estate services without entering into an agency
19 relationship.

20 B. A single act of a person in performing or
21 attempting to perform an activity described in Paragraph [~~(15)~~]
22 (16) of Subsection A of this section makes the person a
23 qualifying broker. A single act of a person in performing or
24 attempting to perform an activity described in Paragraph (3) of
25 Subsection A of this section makes the person an associate

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1 broker.

2 C. The provisions of Chapter 61, Article 29 NMSA
3 1978 do not apply to:

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

9 (2) the employees of the owner or the
10 employees of a qualifying broker acting on behalf of the owner,
11 with respect to the property owned, if the acts are performed
12 in the regular course of or incident to the management of the
13 property and the investments;

14 (3) isolated or sporadic transactions not
15 exceeding two transactions annually in which a person acts as
16 attorney-in-fact under a duly executed power of attorney
17 delivered by an owner authorizing the person to finally
18 consummate and to perform under any contract the sale, leasing
19 or exchange of real estate on behalf of the owner; and the
20 owner or attorney-in-fact has not used a power of attorney for
21 the purpose of evading the provisions of Chapter 61, Article 29
22 NMSA 1978;

23 (4) transactions in which a person acts as
24 attorney-in-fact under a duly executed power of attorney
25 delivered by an owner related to the attorney-in-fact within

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1 the fourth degree of consanguinity or closer, authorizing the
2 person to finally consummate and to perform under any contract
3 for the sale, leasing or exchange of real estate on behalf of
4 the owner;

5 (5) the services rendered by an attorney at
6 law in the performance of the attorney's duties as an attorney
7 at law;

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

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

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

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

25 (a) a description of the parties, the

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1 real estate and any additional information necessary to
2 identify the specific transaction governed by the agreement;

3 (b) the terms of compensation between
4 the auctioneer and the qualifying broker;

5 (c) the effective date and definitive
6 termination date of the agreement; and

7 (d) a statement that the auctioneer
8 agrees to: 1) cooperate fully with the qualifying broker and
9 all associate brokers designated by the qualifying broker; 2)
10 conduct all contact with parties, including the general public
11 and other brokers, in association with the qualifying broker or
12 associate brokers designated by the qualifying broker; and 3)
13 conduct all marketing and solicitations for business in the
14 name of the qualifying broker."

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

17 "61-29-23. JUDGMENT AGAINST QUALIFYING OR ASSOCIATE
18 BROKER--PETITION--REQUIREMENTS--RECOVERY LIMITATIONS.--

19 A. When [~~any~~] an aggrieved person claims a
20 pecuniary loss caused by a state-licensed qualifying broker or
21 associate broker based upon fraud, knowing or willful
22 misrepresentation or wrongful conversion of funds entrusted to
23 the qualifying broker or associate broker, [~~which loss arose~~
24 ~~out of any~~] involving a transaction for which a qualifying
25 broker's or an associate broker's license is required and which

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1 arose out of or during the course of a transaction involving
2 the sale, lease, exchange or other disposition of real estate
3 or property management, where the cause of action arose on or
4 after July 1, 1980, that person may, within ~~[one year]~~ two
5 years after obtaining a final judgment based upon fraud,
6 knowing or willful misrepresentation or wrongful conversion of
7 funds entrusted to the qualifying broker or associate broker
8 ~~[and the termination of all proceedings, including appeals in~~
9 ~~connection with the judgment, file a verified petition with the~~
10 ~~commission for payment]~~ from a court of competent jurisdiction,
11 file a verified petition with the commission for recovery
12 pursuant to the Real Estate Recovery Fund Act. The real estate
13 recovery fund reimburses the claimant for ~~[the]~~ unpaid actual
14 damages included in the judgment ~~[and unpaid]~~, but not more
15 than ~~[ten thousand dollars (\$10,000)]~~ fifty thousand dollars
16 (\$50,000) per judgment regardless of the number of persons
17 aggrieved or parcels of real estate involved in the
18 transaction. The aggregate amount recoverable by all claimants
19 for losses ~~[caused by]~~ against any one licensee during one
20 calendar year shall not exceed ~~[thirty thousand dollars~~
21 ~~(\$30,000)]~~ one hundred thousand dollars (\$100,000).

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

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

4 ~~[G.]~~ D. The commission shall conduct a hearing on
5 the petition after service of the petition upon the commission
6 and the licensee. At the hearing, the petitioner shall be
7 required to show that the petitioner:

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

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

14 ~~[(3) has obtained a judgment of the kind~~
15 ~~described in Subsection A of this section, the amount awarded~~
16 ~~and the amount owing at the date of the petition;~~

17 ~~(4) has had execution issued upon the judgment~~
18 ~~and that the officer executing the writ has made a return~~
19 ~~showing that the judgment debtor has no property within the~~
20 ~~state subject to execution. If execution is levied against the~~
21 ~~property of the judgment debtor, the petitioner shall show that~~
22 ~~the amount realized on the sale was insufficient to satisfy the~~
23 ~~judgment and shall set forth the amount realized from the sale~~
24 ~~and the balance remaining due on the judgment after application~~
25 ~~of the amount realized;~~

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1 ~~(5) has made reasonable searches and inquiries~~
2 ~~to ascertain whether the judgment debtor is possessed of real~~
3 ~~or personal property or other assets liable to be sold or~~
4 ~~applied in satisfaction of the judgment, including partnership~~
5 ~~assets, licensee's estate or any bond or insurance, and that~~
6 ~~the petitioner has exercised reasonable diligence to secure~~
7 ~~payment of the judgment from the assets of the judgment debtor;~~
8 ~~and~~

9 ~~(6)] (3) has a judgment that is not~~

10 ~~[(a)] covered by [any] a bond, insurance,~~
11 ~~surety agreement or indemnity agreement~~

12 ~~[(b) a loss incurred by a partner, joint~~
13 ~~venturer, employer, employee or associate of the licensee whose~~
14 ~~conduct is alleged to have caused the loss; or a corporate~~
15 ~~officer or director of a corporation in which the judgment~~
16 ~~debtor is also an officer, director or employee; or~~

17 ~~(c) a loss incurred by any business or~~
18 ~~other entity in which the licensee whose conduct is alleged to~~
19 ~~have caused the loss has any interest at the time of the~~
20 ~~conduct alleged to have caused the loss].~~

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

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

25 "61-29-24. COMMISSION--[REVIEW] COMPROMISE.--Upon receipt
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1 of a petition as required by Section 61-29-23 NMSA 1978, the
2 commission shall conduct a hearing in substantially the same
3 manner and with the same authority as set forth in the Uniform
4 Licensing Act [~~including Sections 61-1-9 through 61-1-11 NMSA~~
5 ~~1978. Review of the commission's decision shall be in the~~
6 ~~manner provided by Section 61-1-20 NMSA 1978~~]. The commission
7 may compromise a claim based upon the application of a
8 petitioner."

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