

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 100

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

INTRODUCED BY

Janelle Anyanonu

AN ACT

RELATING TO PROPERTY MANAGEMENT; EXEMPTING SERVICES RENDERED BY ATTORNEYS AT LAW AND CONTRACTORS IN THE PERFORMANCE OF PROPERTY MANAGEMENT FROM THE PROVISIONS OF CHAPTER 61, ARTICLE 29 NMSA 1978.

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

underscored material = new
~~[bracketed material]~~ = delete

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

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) "auctioneer" means a person who auctions
10 or offers to auction real property;

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

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

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

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

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

25 (b) by a city or county to allow five or

1 more multifamily units; provided that all units are located on
2 a single parcel of land with a single legal description;

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

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

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

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

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

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

24 (15) "property management" means real estate
25 services as specified by a management agreement that include

underscoring material = new
~~[bracketed material] = delete~~

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

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

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

.229296.1

underscoring material = new
~~[bracketed material] = delete~~

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

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

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

.229296.1

underscoring material = new
~~[bracketed material]~~ = delete

1 A of this section makes the person an associate 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

.229296.1

underscoring material = new
[bracketed material] = delete

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) the services rendered in the performance
9 of property management by an attorney at law;

10 (7) the services rendered in the performance
11 of property management by a contractor licensed pursuant to the
12 Construction Industries Licensing Act;

13 [~~6~~] (8) a person acting in the capacity of a
14 receiver, trustee in bankruptcy, administrator or executor, a
15 person selling real estate pursuant to an order of any court or
16 a trustee acting under a trust agreement, deed of trust or will
17 or the regular salaried employee of a trustee;

18 [~~7~~] (9) the activities of a salaried
19 employee of a governmental agency acting within the scope of
20 employment;

21 [~~8~~] (10) persons who deal exclusively in
22 mineral leases or the sale or purchase of mineral rights or
23 royalties in any case in which the fee to the land or the
24 surface rights are in no way involved in the transaction; or

25 [~~9~~] (11) an auctioneer; provided that

.229296.1

underscoring material = new
~~[bracketed material] = delete~~

1 payments to an auctioneer for services rendered in connection
2 with an auction shall be made to the auctioneer by a qualifying
3 broker, and prior to performing an auction of real estate, the
4 auctioneer shall enter into a transaction-specific written
5 agreement with a qualifying broker that includes:

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

9 (b) the terms of compensation between
10 the auctioneer and the qualifying broker;

11 (c) the effective date and definitive
12 termination date of the agreement; and

13 (d) a statement that the auctioneer
14 agrees to: 1) cooperate fully with the qualifying broker and
15 all associate brokers designated by the qualifying broker; 2)
16 conduct all contact with parties, including the general public
17 and other brokers, in association with the qualifying broker or
18 associate brokers designated by the qualifying broker; and 3)
19 conduct all marketing and solicitations for business in the
20 name of the qualifying broker."