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SENATE BILL 164

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Joseph A. Fidel

AN ACT

RELATING TO REAL ESTATE LICENSES; CHANGING CERTAIN PROVISIONS FOR LICENSING, FEES AND MISCONDUCT OF BROKERS; ELIMINATING THE SALESPERSON CATEGORY OF REAL ESTATE LICENSES.

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

Section 1. Section 61-29-1 NMSA 1978 (being Laws 1959, Chapter 226, Section 1, as amended) is amended to read:

"61-29-1. PROHIBITION.--It is unlawful for [~~any person, business association or corporation~~] a person to engage in the business, act in the capacity of, advertise or display in any manner or otherwise assume to engage in the business of, or act as, a [~~real estate~~] qualifying broker or [~~real estate salesman~~] associate broker within this state without a license issued by the [~~New Mexico real estate~~] commission. A person who engages in the business or acts in the capacity of a

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1 qualifying broker or associate broker in this state, with or  
2 without a New Mexico license, has thereby submitted to the  
3 jurisdiction of the state and to the administrative  
4 jurisdiction of the commission and is subject to all penalties  
5 and remedies available for a violation of any provision of  
6 Chapter 61, Article 29 NMSA 1978. "

7 Section 2. Section 61-29-2 NMSA 1978 (being Laws 1999,  
8 Chapter 127, Section 1) is amended to read:

9 "61-29-2. DEFINITIONS AND EXCEPTIONS. --

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

11 (1) "agency relationship" or "brokerage  
12 relationship" means the legal or [~~contractural~~] contractual  
13 relationship between a person and a brokerage in a real estate  
14 transaction subject to the jurisdiction of the commission;

15 [~~(2) "broker" or "qualifying broker" means a~~  
16 ~~person who for compensation or other consideration from~~  
17 ~~another:~~

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

22 (b) ~~leases, rents or auctions or offers~~  
23 ~~to lease, rent or auction real estate;~~

24 (c) ~~advertises or holds himself out as~~  
25 ~~being engaged in the business of buying, selling, exchanging,~~

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1 ~~renting, leasing, auctioning or dealing with options on real~~  
2 ~~estate for others as a whole or partial vocation; or~~

3 ~~(d) engages in the business of charging~~  
4 ~~an advance fee or contracting for collection of a fee in~~  
5 ~~connection with a contract under which he undertakes primarily~~  
6 ~~to promote the sale of real estate through its listing in a~~  
7 ~~publication issued primarily for that purpose or for the~~  
8 ~~purpose of referral of information concerning real estate to~~  
9 ~~brokers]~~

10 (2) "associate broker" means a person who for  
11 compensation or other consideration is associated with or  
12 engaged under contract by a qualifying broker to participate  
13 in an activity described in Subparagraphs (a) through (d) of  
14 Paragraph (10) of this subsection;

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

18 (4) "client" means a buyer, seller, landlord  
19 or tenant who has entered into an express written agreement  
20 with a brokerage for real estate services subject to the  
21 jurisdiction of the commission;

22 (5) "commission" means the New Mexico real  
23 estate commission [~~created pursuant to Section 61-29-4 NMSA~~  
24 ~~1978~~];

25 (6) "customer" means a buyer, seller,

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1 landlord or tenant who uses real estate services without  
2 entering into an express written agreement with a brokerage  
3 subject to the jurisdiction of the commission;

4 (7) "license" means a ~~[real estate broker's]~~  
5 license issued by the commission;

6 (8) "licensee" means ~~[anyone]~~ a person  
7 holding a ~~[valid real estate]~~ license ~~[subject to the~~  
8 ~~jurisdiction of the commission]~~;

9 (9) "nonagent" means a brokerage and its  
10 licensees providing real estate services to either clients by  
11 means of an express written agreement or to customers without  
12 an express written agreement;

13 (10) "qualifying broker" means a person who:

14 (a) for compensation or other  
15 consideration from another, lists, sells or offers to sell  
16 real estate; buys or offers to buy real estate; or negotiates  
17 the purchase, sale or exchange of real estate or options on  
18 real estate;

19 (b) for compensation or other  
20 consideration from another, leases, rents or auctions or  
21 offers to lease, rent or auction real estate;

22 (c) advertises or holds himself out as  
23 being engaged in the business of buying, selling, exchanging,  
24 renting, leasing, auctioning or dealing with options on real  
25 estate for others as a whole or partial vocation;

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1                   (d) 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 he undertakes primarily  
4 to promote the sale of real estate through its listing in a  
5 publication issued primarily for that purpose or for the  
6 purpose of referral of information concerning real estate to  
7 brokers;

8                   (e) has been licensed and actively  
9 engaged in the real estate business as an associate broker or  
10 salesperson for at least three years;

11                   (f) has qualified as an individual  
12 proprietorship, corporation, partnership or association to do  
13 business as a real estate brokerage in the state of New  
14 Mexico, or is a qualifying broker employed by the owner of a  
15 real estate business;

16                   (g) is responsible for all activity  
17 within a real estate office or branch office;

18                   (h) is responsible for the supervision  
19 of any associate broker who is licensed with him transacting  
20 real estate business described in Section 61-29-2 NMSA 1978;

21                   (i) is responsible for trust accounts  
22 and trust account records; and

23                   (j) assures compliance with all  
24 licensing laws and rules pertaining to office location and  
25 advertising; and

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1                    [~~(10)~~] (11) "real estate" means land,  
2 improvements, leaseholds and other interests in real property  
3 that are less than a fee simple ownership interest, whether  
4 tangible or intangible [~~and~~

5                    ~~(11) "real estate salesperson" means a person~~  
6 ~~who for compensation or other valuable consideration is~~  
7 ~~associated with or engaged under contract by a broker to~~  
8 ~~participate in an activity described in Subparagraphs (a)~~  
9 ~~through (d) of Paragraph (2) of this subsection or to carry on~~  
10 ~~the broker's business as a whole or partial vocation].~~

11                    B. A single act of a person in performing or  
12 attempting to perform an activity described in Subparagraphs  
13 (a) through [~~(d)~~] (j) of Paragraph [~~(2)~~] (10) of Subsection A  
14 of this section makes the person a qualifying broker. A  
15 single act of a person in performing or attempting to perform  
16 an activity described in Paragraph [~~(11)~~] (2) of Subsection A  
17 of this section makes the person [~~a real estate salesperson~~]  
18 an associate broker.

19                    C. The provisions of Chapter 61, Article 29 NMSA  
20 1978 do not apply to:

21                    (1) a person who as owner or lessor performs  
22 any of the activities included in this section with reference  
23 to property owned or leased by him, the employees of the owner  
24 or lessor or the employees of a broker acting on behalf of the  
25 owner or lessor, with respect to the property owned or leased,

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1 if the acts are performed in the regular course of or incident  
2 to the management of the property and the investments, except  
3 where when the sale or offering for sale or the lease or  
4 offering for lease of the property constitutes a subdivision  
5 containing one hundred or more parcels;

6 (2) isolated or sporadic transactions not  
7 exceeding two transactions annually in which a person acts as  
8 attorney-in-fact under a duly executed power of attorney  
9 delivered by an owner authorizing the person to finally  
10 consummate and to perform under any contract the sale, leasing  
11 or exchange of real estate on behalf of the owner; and the  
12 owner or attorney-in-fact has not used a power of attorney for  
13 the purpose of evading the provisions of Chapter 61, Article  
14 29 NMSA 1978;

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

22 (4) the services rendered by an attorney at  
23 law in the performance of his duties as an attorney at law;

24 (5) a person acting in the capacity of a  
25 receiver, trustee in bankruptcy, administrator or executor, a

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1 person selling real estate pursuant to an order of any court  
2 or a trustee acting under a trust agreement, deed of trust or  
3 will or the regular salaried employee of a trustee;

4 (6) the activities of a salaried employee of  
5 a governmental agency acting within the scope of his  
6 employment; or

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

11 Section 3. Section 61-29-5 NMSA 1978 (being Laws 1959,  
12 Chapter 226, Section 4) is amended to read:

13 "61-29-5. ORGANIZATION OF COMMISSION. --The commission  
14 shall organize by electing a president, vice president and  
15 secretary from its members. A majority of the commission  
16 shall constitute a quorum and may exercise all powers and  
17 duties devolving upon it and do all things necessary to carry  
18 into effect the provisions of [~~this act~~] Chapter 61, Article  
19 29 NMSA 1978. The secretary of the commission shall keep a  
20 record of its proceedings [~~a register of persons licensed as~~  
21 ~~real estate brokers and as real estate salesmen, showing the~~  
22 ~~name, place of business of each and the date and number of his~~  
23 ~~or her certificate, and a record of all licenses or~~  
24 ~~certificates issued, refused, removed, suspended or revoked.~~  
25 ~~This record shall be open to public inspection at all~~

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1 ~~reasonable times~~]. "

2 Section 4. Section 61-29-8 NMSA 1978 (being Laws 1959,  
3 Chapter 226, Section 7, as amended) is amended to read:

4 "61-29-8. LICENSE FEES--DISPOSITION. --

5 A. The following fees shall be established and  
6 charged by the commission and paid into the real estate  
7 commission fund:

8 (1) for each examination, a fee [~~of sixty~~  
9 ~~dollars (\$60.00)~~] not to exceed ninety-five dollars (\$95.00);

10 (2) for each qualifying broker's license  
11 issued, a fee [~~of~~] not to exceed one hundred eighty dollars  
12 (\$180) and for each renewal thereof, a fee [~~of~~] not to exceed  
13 one hundred eighty dollars (\$180);

14 (3) for each [~~salesperson's~~] associate  
15 broker's license issued, a fee [~~of~~] not to exceed one hundred  
16 eighty dollars (\$180) and for each renewal thereof, a fee [~~of~~]  
17 not to exceed one hundred eighty dollars (\$180);

18 (4) subject to the provisions of Paragraph  
19 [~~(11)~~] (10) of this subsection, for each change of place of  
20 business or change of employer or contractual associate, a fee  
21 [~~of~~] not to exceed twenty dollars (\$20.00);

22 (5) for each duplicate license, where the  
23 license is lost or destroyed and affidavit is made thereof, a  
24 fee [~~of~~] not to exceed twenty dollars (\$20.00);

25 (6) for each license history, a fee [~~of~~] not

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1 to exceed twenty-five dollars (\$25.00);

2 (7) for copying of documents by the  
3 ~~commission~~, a fee [~~set by the commission~~] not to exceed one  
4 dollar (\$1.00) per copy;

5 (8) for each [~~additional~~] license law and  
6 rules and regulations booklet, a fee [~~set by the commission~~]  
7 not to exceed ten dollars (\$10.00) per booklet;

8 (9) for each [~~additional directory~~] hard copy  
9 or electronic list of [~~licensed real estate brokers and~~  
10 ~~salespersons~~] licensees, a fee [~~set by the commission~~] not to  
11 exceed twenty dollars (\$20.00); and

12 [~~(10) for each supplement to the directory of~~  
13 ~~licensed real estate brokers and salespersons, a fee set by~~  
14 ~~the commission not to exceed twenty dollars (\$20.00); and~~

15 ~~(11)]~~ (10) when a license must be reissued for  
16 [~~a salesperson~~] an associate broker because of change of  
17 address of the qualifying broker's office, death of the  
18 [~~licensed~~] qualifying broker when a successor [~~licensed~~]  
19 qualifying broker is replacing the decedent and the  
20 [~~salesperson~~] associate broker remains in the office or  
21 because of a change of name of the office or the entity of the  
22 [~~licensed~~] qualifying broker, the [~~licensed~~] qualifying broker  
23 or successor [~~licensed~~] qualifying broker as the case may be  
24 shall pay to the commission as the affected [~~salesperson's~~]  
25 associate broker's license reissue fee an amount not to exceed

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1 twenty dollars (\$20.00); but if there are eleven or more  
2 affected [~~salespersons~~] associate brokers in the [~~licensed~~]  
3 qualifying broker's office, the total fee paid to effect  
4 reissuance of all of those licenses shall not exceed two  
5 hundred dollars (\$200).

6 B. All fees set by the commission shall be set by  
7 rule [~~or regulation~~] and only after all requirements have been  
8 met as prescribed by Chapter 61, Article 29 NMSA 1978. Any  
9 changes or amendments to the rules [~~and regulations~~] shall be  
10 filed in accordance with the provisions of the State Rules  
11 Act.

12 C. The commission shall deposit all money received  
13 by it from fees in accordance with the provisions of Chapter  
14 61, Article 29 NMSA 1978 with the state treasurer, who shall  
15 keep that money in a separate fund to be known as the "real  
16 estate commission fund", and money so deposited in that fund  
17 is appropriated for the purpose of carrying out the provisions  
18 of Chapter 61, Article 29 NMSA 1978 or to maintain the real  
19 estate recovery fund as required by the Real Estate Recovery  
20 Fund Act and shall be paid out of the fund upon the vouchers  
21 of the [~~president and secretary~~] executive secretary of the  
22 commission or his designee; provided that the total fees and  
23 charges collected and paid into the state treasury and any  
24 money so deposited shall be expended only for the purposes  
25 authorized by Chapter 61, Article 29 NMSA 1978.

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1 D. The commission shall by ~~[regulation]~~ rule  
2 provide for a proportionate refund of the license issuance fee  
3 or the license renewal fee if the license is issued or renewed  
4 for a period of ~~[two or]~~ three years pursuant to Section  
5 61-29-11 NMSA 1978 and is terminated with more than one year  
6 remaining. "

7 Section 5. Section 61-29-9 NMSA 1978 (being Laws 1959,  
8 Chapter 226, Section 8, as amended) is amended to read:

9 "61-29-9. QUALIFICATIONS FOR LICENSE. --

10 A. Licenses shall be granted only to persons who  
11 are deemed by the commission to be of good repute and  
12 competent to transact the business of a ~~[real estate broker or~~  
13 ~~salesperson]~~ qualifying broker or associate broker in a manner  
14 that safeguards the interests of the public.

15 B. ~~[Each]~~ An applicant for a qualifying broker's  
16 license shall be a legal resident of the United States and  
17 have reached the age of majority. ~~[and, except as provided in~~  
18 ~~Section 61-29-14 NMSA 1978, be a resident of New Mexico.~~

19 ~~Each]~~ An applicant for a ~~[real estate]~~ qualifying broker's  
20 license shall have passed the approved New Mexico real estate  
21 examination and shall:

22 (1) have ~~[performed]~~ been actively ~~[as a]~~  
23 engaged in the real estate ~~[salesperson]~~ business for at least  
24 ~~[twenty-four months out of the preceding thirty-six months~~  
25 ~~immediately prior to filing application]~~ three years as an

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1 associate broker or salesperson and furnish the commission a  
2 certificate that he has completed successfully [~~ninety~~  
3 ~~classroom hours of instruction in basic real estate courses~~] a  
4 broker basics course approved by the commission;

5 [~~(2)~~] ~~furnish the commission a certificate~~  
6 ~~that he has completed successfully one hundred eighty~~  
7 ~~classroom hours of instruction in basic real estate courses~~  
8 ~~approved by the commission;~~

9 ~~(3)~~] (2) furnish the commission a certificate  
10 that he is a duly licensed real estate broker in good standing  
11 in another state, providing he has completed successfully  
12 ninety classroom hours of instruction in basic real estate  
13 courses approved by the commission, thirty hours of which  
14 shall have been a broker basics course; or

15 [~~(4)~~] (3) furnish the commission satisfactory  
16 proof of his equivalent experience in an activity closely  
17 related to or associated with real estate and furnish the  
18 commission a certificate that he has completed successfully  
19 ninety classroom hours of instruction in basic real estate  
20 courses approved by the commission, thirty hours of which  
21 shall have been a broker basics course.

22 C. Each applicant for [~~a salesperson's~~] an  
23 associate broker's license shall be a legal resident of the  
24 United States, have reached the age of majority and have  
25 passed the approved New Mexico real estate examination and

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1 shall furnish the commission a certificate that he has  
2 completed successfully [~~sixty~~] one hundred twenty hours of  
3 classroom [~~hours of~~] instruction in basic real estate courses  
4 approved by the commission.

5 D. The commission shall require the information  
6 [~~as it may deem~~] it deems necessary from every applicant to  
7 determine his honesty, trustworthiness and competency.  
8 Corporations, partnerships or associations [~~shall be entitled~~  
9 ~~to~~] may hold a broker's license issued in the name of the  
10 corporation, partnership or association [~~provided~~] if at least  
11 one member of the partnership or association or one officer or  
12 employee of a corporation who actively engages in the real  
13 estate business first secures a qualifying broker's license.  
14 The license shall be issued in the name of the corporation,  
15 partnership or association, naming the partner, associate,  
16 officer or employee as qualifying broker for the corporation,  
17 partnership or association. "

18 Section 6. Section 61-29-10 NMSA 1978 (being Laws 1959,  
19 Chapter 226, Section 9, as amended) is amended to read:

20 "61-29-10. APPLICATION FOR LICENSE AND EXAMINATION. --

21 A. [~~All applications for licenses to act as real~~  
22 ~~estate brokers and real estate salesmen~~] An application for a  
23 license shall be made in writing to the [~~New Mexico real~~  
24 ~~estate~~] commission and shall contain such data and information  
25 as may be required upon a form to be prescribed and furnished

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1 by the commission. [~~Such applications~~] The application shall  
2 be accompanied by:

3 (1) the recommendation of two reputable  
4 citizens who own real estate in the county in which the  
5 applicant resides [~~or has his place of business~~], which  
6 recommendation shall certify that the applicant is of good  
7 moral character, honest and trustworthy; and

8 (2) the [~~annual~~] triennial license fee  
9 prescribed by the commission [~~which shall not be refunded in~~  
10 ~~any event~~].

11 B. In addition to proof of honesty,  
12 trustworthiness and good reputation, [~~each~~] an applicant shall  
13 pass satisfactorily a written examination [~~prepared by or~~  
14 ~~under the supervision of~~] approved by the commission. The New  
15 Mexico examination shall be given at [~~such~~] the time and  
16 [~~such~~] places within the state as the commission shall  
17 prescribe; however, the examination [~~for brokers~~] shall be  
18 given not less than two times during each calendar year [~~and~~  
19 ~~the examination for salesmen shall be given not less than six~~  
20 ~~times during each calendar year~~]. The examination [~~for a~~  
21 ~~broker's license~~] shall include business ethics, writing,  
22 composition, arithmetic, elementary principles of land  
23 economics and appraisals, a general knowledge of the statutes  
24 of this state relating to deeds, mortgages, contracts of sale,  
25 agency and brokerage and the provisions of [~~Sections 61-29-1~~

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1 ~~through 61-29-18 NMSA 1978. The examination for a broker's~~  
2 ~~license shall be of a more exacting nature and scope and more~~  
3 ~~stringent than the examination for a salesman's license.]~~

4 Chapter 61, Article 29 NMSA 1978.

5 C. No applicant is permitted to engage in the real  
6 estate business [~~either as a broker or salesman~~] until he has  
7 satisfactorily passed the approved examination, complied with  
8 the other requirements of Sections 61-29-1 through 61-29-18  
9 NMSA 1978, and until a license has been issued to him.

10 D. Notice of passing or failing to pass the New  
11 Mexico examination shall be given by the commission to [~~each~~]  
12 an applicant not later than three weeks following the date of  
13 the examination.

14 E. The commission may establish educational  
15 programs and procure qualified personnel, facilities and  
16 materials for the instruction of persons desiring to become  
17 [~~real-estate~~] qualifying brokers or [~~salesmen~~] associate  
18 brokers or desiring to improve their proficiency as [~~real~~  
19 ~~estate~~] qualifying brokers or [~~salesmen~~] associate brokers.  
20 The commission may inspect and accredit educational programs  
21 and courses of study and may establish standards of  
22 accreditation for educational programs conducted in this  
23 state. The expenses incurred by the commission in activities  
24 [~~enabled under the provisions of~~] authorized pursuant to this  
25 subsection shall not exceed the total revenues received and



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1 accumulated by the commission. "

2 Section 7. Section 61-29-10.3 NMSA 1978 (being Laws  
3 1999, Chapter 127, Section 4) is amended to read:

4 "61-29-10.3. BROKERAGE NONAGENCY RELATIONSHIPS

5 [~~CREATION~~]. - -

6 [~~A. For all regulated real estate transactions~~  
7 ~~first executed on or before January 1, 2000, a buyer, seller,~~  
8 ~~landlord or tenant using real estate services without entering~~  
9 ~~into an express written agreement will be a customer of the~~  
10 ~~brokerage providing the real estate services, and no agency~~  
11 ~~relationship or agency duties will be imposed.~~

12 ~~B.]~~ A. For all regulated real estate transactions,  
13 [~~first executed on or after January 1, 2000~~] a buyer, seller,  
14 landlord or tenant may enter into an express written agreement  
15 to become a client of a brokerage, without creating an agency  
16 relationship, and no agency duties will be imposed.

17 [~~C.]~~ B. The commission shall promulgate rules  
18 governing the rights and responsibilities of clients and  
19 customers and the rights, responsibilities and duties of the  
20 brokerage in a nonagency relationship. All licensees will  
21 perform the duties of licensees as prescribed by the  
22 commission. "

23 Section 8. Section 61-29-11 NMSA 1978 (being Laws 1959,  
24 Chapter 226, Section 10, as amended) is amended to read:

25 "61-29-11. ISSUANCE, RENEWAL AND SURRENDER OF

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1 LICENSES. - -

2 A. The commission shall issue to each qualified  
3 applicant a ~~[permanent]~~ license in ~~[such]~~ the form and size  
4 ~~[as shall be]~~ prescribed by the commission.

5 B. ~~[This]~~ The license shall show the name and  
6 address of the licensee. ~~[and, in the case of a real estate~~  
7 ~~salesperson's]~~ An associate broker's license shall show the  
8 name of the ~~[real estate]~~ qualifying broker by whom he is  
9 engaged. The license of ~~[each real estate salesperson]~~ the  
10 associate broker shall be delivered or mailed to the ~~[real~~  
11 ~~estate]~~ qualifying broker by whom ~~[such real estate~~  
12 ~~salesperson]~~ the associate broker is engaged and shall be kept  
13 in the custody and control of that qualifying broker.

14 C. Every license shall be renewed every three  
15 years on or before the last day of the month following the  
16 licensee's month of birth. ~~[The]~~ Upon written request for  
17 renewal by the licensee, the commission shall certify renewal  
18 of ~~[each]~~ a license ~~[in the absence of any]~~ if there is no  
19 reason or condition that might warrant the refusal of the  
20 renewal of a license ~~[upon written request for renewal by the~~  
21 ~~licensee]~~. The licensee shall provide proof of compliance  
22 with continuing education requirements and ~~[receipt of]~~ pay  
23 the renewal fee. ~~[In the event any]~~ If a licensee has not  
24 made application for renewal of license, furnished proof of  
25 compliance with continuing education requirements and paid the

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1 renewal fee by ~~[his]~~ the license renewal date, the license  
2 shall expire. The commission may ~~[in its discretion]~~ require  
3 ~~[the]~~ a person whose license has expired to apply for a  
4 license as if he had not been previously licensed under  
5 Chapter 61, Article 29 NMSA 1978 and further require that he  
6 be reexamined. The commission shall require ~~[the]~~ a person  
7 whose license has expired to pay when he applies for a  
8 license, in addition to any other fee, a late fee of one  
9 hundred dollars (\$100). If during a period of one year from  
10 the date the license expires the person or his spouse is  
11 either absent from this state on active duty military service  
12 or the person is suffering from an illness or injury of such  
13 severity that the person is physically or mentally incapable  
14 of making application for a license, payment of the late fee  
15 and reexamination shall not be required by the commission if,  
16 within three months of the person's permanent return to this  
17 state or sufficient recovery from illness or injury to allow  
18 the person to make an application, the person makes  
19 application to the commission for a license. A copy of that  
20 ~~[person]~~ person's or his spouse's military orders or a  
21 certificate from the applicant's physician shall accompany the  
22 application. ~~[Any]~~ A person excused by reason of active duty  
23 military service, illness or injury as provided for in this  
24 subsection may make application for a license without  
25 imposition of the late fee. All fees collected pursuant to

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1 this subsection shall be disposed of in accordance with the  
2 provisions of Section 61-29-8 NMSA 1978. The revocation of a  
3 qualifying broker's license [~~shall~~] automatically [~~suspend~~]  
4 suspends every [~~real estate salesperson's~~] active license  
5 granted to any person by virtue of [~~his~~] association with the  
6 qualifying broker whose license has been revoked, pending a  
7 change of broker [~~and the issuance of a new license. Such new~~  
8 ~~license shall be issued~~]. Upon the naming of a new qualified  
9 broker, the suspended license will be reactivated without  
10 charge if granted during the [same year in which the license  
11 was granted] three-year renewal cycle.

12 D. Each resident [~~licensed~~] qualifying broker  
13 shall maintain a fixed office within this state, which shall  
14 be so located as to conform with local regulations. Every  
15 office operated by a [~~licensed~~] qualifying broker [~~under~~  
16 ~~Chapter 61, Article 29 NMSA 1978~~] shall have a [~~licensed~~]  
17 qualifying broker in charge who is a natural person. The  
18 license of the qualifying broker and [~~the license of each~~  
19 ~~salesperson~~] each licensee associated with [~~or under contract~~  
20 ~~to~~] that broker shall be prominently displayed in the office.  
21 The address of the office shall be designated in the  
22 qualifying broker's license, and no license issued shall  
23 authorize the licensee to transact real estate business at any  
24 other address [~~except a licensed branch office~~]. In case of  
25 removal from the designated address, the licensee shall make

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1 application to the commission before [~~such~~] the removal or  
2 within ten days thereafter, designating the new location of  
3 his office and paying the required fee, whereupon the  
4 commission shall issue a license for the new location if the  
5 new location complies with the terms of Chapter 61, Article 29  
6 NMSA 1978. [~~Each licensed~~] A qualifying broker shall maintain  
7 a sign on his office of such size and content as the  
8 commission prescribes. In making application for a license or  
9 for a change of address, [~~the licensee~~] a qualifying broker  
10 shall verify that his office conforms with local regulations.

11 E. When [~~any real estate salesperson~~] an associate  
12 broker is discharged or terminates his association or  
13 employment with [~~the real estate~~] a qualifying broker with  
14 whom he is associated, it is the duty of that [~~real estate~~]  
15 qualifying broker to [~~immediately~~] deliver or mail to the  
16 commission that [~~real estate salesperson's~~] person's license  
17 within forty-eight hours. The commission shall hold the  
18 license on inactive status. It is unlawful for [~~any real~~  
19 ~~estate salesperson~~] an associate broker to perform any of the  
20 acts [~~contemplated~~] authorized by Chapter 61, Article 29 NMSA  
21 1978 either directly or indirectly under authority of [~~such~~]  
22 an inactive license after his association has been terminated  
23 and his license [~~as salesperson~~] has been returned to the  
24 commission as provided in that article until the appropriate  
25 fee has been paid and the license has been reissued by the

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1        commi ssi on.

2                    ~~[F. During the period from July 1, 1995 through~~  
3 ~~June 30, 1998, the commission in its discretion may renew~~  
4 ~~licenses for periods of one, two or three years for the~~  
5 ~~purpose of coordinating continuing education requirements with~~  
6 ~~license renewal requirements.]"~~

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

9            "61-29-12.    REFUSAL, SUSPENSION OR REVOCATION OF LICENSE  
10 FOR CAUSES ENUMERATED. --

11            A.    The commission [~~shall have the power to~~] may  
12 refuse [~~a license for cause or~~] to issue or may suspend or  
13 revoke a license [~~at any time where~~] if the licensee has by  
14 false or fraudulent representations obtained a license or,  
15 [~~where the licensee~~] in performing or attempting to perform  
16 any of the actions [~~mentioned~~] specified in Chapter 61,  
17 Article 29 NMSA 1978, [~~is deemed to be guilty of: A. making~~]  
18 an applicant or licensee has:

19                    (1) made a substantial misrepresentation;

20                    [~~B. pursuing~~] (2) pursued a continued and  
21 flagrant course of misrepresentation; [~~making~~] made false  
22 promises through agents, salespersons, advertising or  
23 otherwise; or [~~using~~] used any trade name or insignia of  
24 membership in any real estate organization of which the  
25 licensee is not a member;

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1                    [~~C. paying or receiving any~~]

2                    (3) paid or received a rebate, profit,  
3 compensation or commission to or from any unlicensed person,  
4 except his principal or other party to the transaction, and  
5 then only with his principal's written consent;

6                    [~~D. representing or attempting~~]

7                    (4) represented or attempted to represent a  
8 [~~real-estate~~] qualifying broker other than [~~the~~] a qualifying  
9 broker with whom he is [~~licensed~~] associated without the  
10 express knowledge and consent of [~~the~~] that broker;

11                    [~~E. failing~~] (5) failed, within a reasonable  
12 time, to account for or to remit any money coming into his  
13 possession that belongs to others, [~~commingling~~] commingled  
14 funds of others with his own or [~~failing~~] failed to keep  
15 [~~such~~] funds of others in an escrow or trustee account or  
16 [~~failing~~] failed to furnish legible copies of all listing and  
17 sales contracts to all parties executing them;

18                    [~~F. conviction~~] (6) been convicted in any  
19 court of competent jurisdiction of a felony or any offense  
20 involving moral turpitude;

21                    [~~G. employing or compensating~~]

22                    (7) employed or compensated directly or  
23 indirectly [~~any~~] a person for performing any of the acts  
24 regulated by Chapter 61, Article 29 NMSA 1978 [~~who is not a~~  
25 ~~licensed broker or licensed salesperson~~] if that person was

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1 not a licensee; provided, however, that a licensed qualifying  
2 broker may pay a commission to a licensed broker of another  
3 state; provided further that the nonresident broker [~~does~~]  
4 shall not conduct in this state any of the negotiations for  
5 which a fee, compensation or commission is paid except in  
6 cooperation with a licensed qualifying broker of this state;

7 [~~H. failing, if a broker~~]

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

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1     ~~[This]~~ The minimum balance deposit shall not be considered  
2     commingling and shall not be subject to levy, attachment or  
3     garnishment. This ~~[subsection, however, shall]~~ paragraph does  
4     not prohibit a qualifying broker from depositing any deposit  
5     money or other money received by him in a real estate  
6     transaction with another cooperating broker who shall in turn  
7     comply with this ~~[subsection;~~

8             ~~I. failing, if a salesperson]~~ paragraph;

9                     (9) failed, if an associate broker, to place  
10     as soon after receipt as is practicably possible in the  
11     custody of his ~~[registered]~~ qualifying broker, after securing  
12     signatures of all parties to the transaction, any deposit  
13     money or other money entrusted to him by any person dealing  
14     with him as the representative of his ~~[registered]~~ qualifying  
15     broker;

16             ~~[J. violating any provisions]~~

17                     (10) violated a provision of Chapter 61,  
18     Article 29 NMSA 1978 or ~~[any reasonable]~~ a rule ~~[or~~  
19     ~~regulation]~~ promulgated by the commission; ~~[in the interests~~  
20     ~~of the public and in conformance with the provisions of~~  
21     ~~Chapter 61, Article 29 NMSA 1978; or~~

22             ~~K. any other conduct]~~

23                     (11) committed an act, whether of the same or  
24     different character from that specified in this ~~[section]~~  
25     subsection, that is related to dealings as a ~~[real estate~~

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1 ~~broker or real estate salesperson~~ licensee and that  
2 constitutes or demonstrates bad faith, incompetency,  
3 untrustworthiness, impropriety, fraud, dishonesty, negligence  
4 or any unlawful act; ~~Any~~ or

5 (12) was licensed to practice real estate in  
6 another jurisdiction, territory or possession of the United  
7 States or another country and was the subject of disciplinary  
8 action as a licensee.

9 B. An unlawful act or violation of ~~[any of the~~  
10 ~~provisions of]~~ Chapter 61, Article 29 NMSA 1978 by ~~[any real~~  
11 ~~estate salesperson]~~ an associate broker, employee, partner or  
12 associate of a ~~[licensed real estate]~~ qualifying broker shall  
13 not be cause for the revocation of a license of ~~[any real~~  
14 ~~estate]~~ the qualifying broker unless it appears to the  
15 satisfaction of the commission that the ~~[real estate]~~  
16 qualifying broker had guilty knowledge of the unlawful act or  
17 violation. "

18 Section 10. Section 61-29-14 NMSA 1978 (being Laws 1959,  
19 Chapter 226, Section 13, as amended) is amended to read:

20 "61-29-14. NONRESIDENT BROKERS. -- ~~[No]~~

21 A. An application for issuance of a license or  
22 renewal of an existing ~~[broker's]~~ license shall be accepted  
23 from a nonresident applicant who is a ~~[resident of]~~ broker  
24 licensed in another state ~~[which does not extend]~~ only if the  
25 other state extends the privilege of reciprocal licensure to

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1 ~~[real estate brokers licensed]~~ licensees in New Mexico. A  
2 qualifying nonresident may become a ~~[real estate broker]~~ New  
3 Mexico nonresident licensee by conforming to all the  
4 conditions of Chapter 61, Article 29 NMSA 1978.

5 B. In its discretion, the commission may  
6 recognize, in lieu of the recommendations and certificates  
7 required to accompany an application for a ~~[broker's]~~ license,  
8 the ~~[broker's]~~ license issued to a nonresident in another  
9 state, provided the other state extends the privilege of  
10 licensure to ~~[real estate brokers licensed]~~ licensees in New  
11 Mexico. The license shall be issued upon payment of the  
12 license fee, verification that the applicant has complied with  
13 his resident state's current education requirements, of which  
14 ninety classroom hours for a nonresident broker must be  
15 approved by the ~~[New Mexico real estate]~~ commission and thirty  
16 of which shall have been a broker basics course, and the  
17 filing by the applicant with the commission of a certified  
18 copy of the applicant's license issued by the other state,  
19 ~~[provided that: A. the applicant shall have maintained]~~ if  
20 the applicant:

21 (1) maintains an active place of business in  
22 the state by which he is licensed and ~~[shall pass the written~~  
23 ~~examination required by]~~ meets the licensing requirements of  
24 Section 61-29-10 NMSA 1978; and

25 ~~[B. the applicant shall file]~~ (2) files with

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1 the commission an irrevocable consent that suits and actions  
2 may be commenced against him in the proper court of any county  
3 of this state in which a cause of action may arise or in which  
4 the plaintiff may reside, by the service of any process or  
5 pleadings authorized by the laws of this state on the  
6 commission, the consent stipulating and agreeing that such  
7 service of process or pleadings on the commission [~~shall be~~  
8 ~~taken and held in all courts to be~~] is as valid and binding as  
9 if personal service had been made upon the applicant in New  
10 Mexico. The instrument containing the consent shall be [~~duly~~  
11 acknowledged and, if [~~the applicant is~~] executed on behalf of  
12 a corporation or association, shall be accompanied by [~~the~~  
13 ~~duly~~] a certified copy of the resolution of the proper  
14 officers or managing board authorizing the [~~proper~~] executing  
15 officer to execute the instrument. [~~In case any process or~~  
16 ~~pleading mentioned in the case is served upon the board, it~~  
17 ~~shall be by duplicate copies, one of which~~] Service of process  
18 or pleadings shall be served in duplicate upon the commission;  
19 one shall be filed in the office of the commission and the  
20 other immediately forwarded by registered mail to the main  
21 office of the applicant against which the process or pleadings  
22 are directed [and

23 C. ~~the applicant shall file a bond in form and~~  
24 ~~content the same as is required of resident applicants under~~  
25 ~~Chapter 61, Article 29 NMSA 1978]. "~~

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1 Section 11. Section 61-29-15 NMSA 1978 (being Laws 1959,  
2 Chapter 226, Section 14) is amended to read:

3 "61-29-15. [PUBLICATION] MAINTENANCE OF LIST OF  
4 LICENSEES. -- The commission shall [~~at least annually, publish~~]  
5 maintain a list of the names and addresses of all licensees  
6 licensed by it under the provisions of [~~this act~~] Chapter 61,  
7 Article 29 NMSA 1978, and of all persons whose license has  
8 been suspended or revoked within that year, together with such  
9 other information relative to the enforcement of the  
10 provisions of [~~this act~~] Chapter 61, Article 29 NMSA 1978 as  
11 it may deem of interest to the public. The commission shall  
12 also [~~prepare~~] maintain a statement of all funds received and  
13 a statement of all disbursements, and copies of [~~such~~] the  
14 statements shall be mailed by the commission to any person in  
15 this state upon request. "

16 Section 12. Section 61-29-16 NMSA 1978 (being Laws 1959,  
17 Chapter 226, Section 15) is amended to read:

18 "61-29-16. SUIT BY [BROKER OR SALESMAN] LICENSEE. -- No  
19 action for the collection of commission or compensation earned  
20 by any person as a [~~real estate broker or salesman~~] qualifying  
21 broker or associate broker required to be licensed under the  
22 provisions of [~~this act~~] Chapter 61, Article 29 NMSA 1978  
23 shall be maintained in the courts of the state unless [~~such~~]  
24 the person was [a duly licensed broker or salesman] licensed  
25 at the time the alleged cause of action arose. In any event,

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1 suit against a member of the public as distinguished from any  
2 person licensed under [~~this act~~] Chapter 61, Article 29 NMSA  
3 1978 shall be maintained only in the name of the qualifying  
4 broker. "

5 Section 13. Section 61-29-23 NMSA 1978 (being Laws 1980,  
6 Chapter 82, Section 4, as amended) is amended to read:

7 "61-29-23. JUDGMENT AGAINST [~~BROKER OR SALESPERSON~~]  
8 LICENSEE- - PETITION- - REQUIREMENTS- - RECOVERY LIMITATIONS. - -

9 A. When [~~any~~] an aggrieved person claims a  
10 pecuniary loss caused by a [~~state-licensed real estate broker~~  
11 ~~or salesperson~~] licensee based upon fraud, knowing or willful  
12 misrepresentation or wrongful conversion of funds entrusted to  
13 him, which loss arose out of any transaction for which a [~~real~~  
14 ~~estate broker's or salesperson's~~] license is required and  
15 arose out of or during the course of a transaction involving  
16 the sale, lease, exchange or other disposition of real estate,  
17 where the cause of action arose on or after July 1, 1980, that  
18 person may, within one year after obtaining a final judgment  
19 based upon fraud, knowing or willful misrepresentation or  
20 wrongful conversion of funds entrusted to him and the  
21 termination of all proceedings, including appeals in  
22 connection with the judgment, file a verified petition with  
23 the commission for payment from the real estate recovery fund  
24 for the actual damages included in the judgment and unpaid,  
25 but not more than ten thousand dollars (\$10,000) per judgment

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1 regardless of the number of persons aggrieved or parcels of  
2 real estate involved in the transaction. The aggregate amount  
3 recoverable by all claimants for losses caused by any one  
4 licensee shall not exceed thirty thousand dollars (\$30,000).

5 B. A copy of the petition shall be served upon the  
6 commission in the manner provided by law for service of a  
7 civil summons.

8 C. The commission shall conduct a hearing on the  
9 petition after service of the petition upon the commission.  
10 At the hearing, the petitioner shall ~~[be required to]~~ show  
11 that he:

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

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

18 (3) has obtained a judgment of the kind  
19 described in Subsection A of this section, the amount awarded  
20 and the amount owing at the date of the petition;

21 (4) has had execution issued upon the  
22 judgment and that the officer executing the writ has made a  
23 return showing that the judgment debtor has no property within  
24 the state subject to execution. If execution is levied  
25 against the property of the judgment debtor, the petitioner

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1     ~~[must]~~ shall show that the amount realized on the sale was  
2     insufficient to satisfy the judgment and ~~[must]~~ shall set  
3     forth the amount realized from the sale and the balance  
4     remaining due on the judgment after application of the amount  
5     realized;

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

14                    (6) has a judgment that is not:

15                             (a) covered by any bond, insurance,  
16    surety agreement or indemnity agreement;

17                             (b) a loss incurred by a partner, joint  
18    venturer, employer, employee or associate of the licensee  
19    whose conduct is alleged to have caused the loss; or a  
20    corporate officer or director of a corporation in which the  
21    judgment debtor is also an officer, director or employee; or

22                             (c) a loss incurred by any business or  
23    other entity in which the licensee whose conduct is alleged to  
24    have caused the loss has any interest at the time of the  
25    conduct alleged to have caused the loss. "



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1           Section 14.   Section 61-29-27 NMSA 1978 (being Laws 1980,  
2 Chapter 82, Section 8, as amended) is amended to read:

3           "61-29-27.   SUBROGATION. -- When the commission makes any  
4 payment from the real estate recovery fund to a judgment  
5 creditor, the commission shall be subrogated to all rights of  
6 the judgment creditor for the amounts paid out of the fund and  
7 any amount and interest so recovered by the commission shall  
8 be deposited in the fund.   The commission may, pursuant to the  
9 provisions of the Uniform Licensing Act, revoke, suspend or  
10 refuse to renew [the] any license of [~~any real estate broker~~  
11 ~~or salesperson~~] a licensee for whom payment from the fund has  
12 been made in accordance with the provisions of the Real Estate  
13 Recovery Fund Act.   Further, the [~~commission~~] commission may  
14 refuse to issue or renew the license of any person for whom  
15 payment from the real estate recovery fund has been made,  
16 until that person reimburses the fund for all payments made on  
17 his behalf. "

18           Section 15.   A new section of Chapter 61, Article 29 NMSA  
19 1978 is enacted to read:

20           "[NEW MATERIAL] UNLICENSED ACTIVITY-- CIVIL PENALTY. -- The  
21 commission may impose a civil penalty in an amount not to  
22 exceed one thousand dollars (\$1,000) for each violation and  
23 assess administrative costs for any investigation and  
24 administrative or other proceedings against any person who is  
25 found, through a court or administrative proceeding, to have

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1 acted without a license in violation of Chapter 61, Article 29  
2 NMSA 1978. "

3 Section 16. A new section of Chapter 61, Article 29 NMSA  
4 1978 is enacted to read:

5 "[NEW MATERIAL] REGULATION AND LICENSING DEPARTMENT--  
6 ADMINISTRATIVELY ATTACHED.--The commission is administratively  
7 attached to the regulation and licensing department. "

8 Section 17. TEMPORARY PROVISION.--

9 A. Until July 1, 2004, a person licensed as a  
10 salesperson pursuant to Chapter 61, Article 29 NMSA 1978 on  
11 June 30, 2001 may, if he satisfies all the requirements for  
12 licensure set forth in that article, continue to be licensed  
13 as a salesperson and may perform the functions of an associate  
14 broker. If, before July 1, 2004, he completes a broker basics  
15 course approved by the commission, he shall, upon application  
16 to the commission, be licensed as an associate broker.

17 B. On July 1, 2004, the license of a person  
18 licensed as a salesperson pursuant to Chapter 61, Article 29  
19 NMSA 1978 shall be placed on inactive status pursuant to rules  
20 of the commission.

21 Section 18. EFFECTIVE DATE.--The effective date of the  
22 provisions of this act is July 1, 2001.