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SENATE BILL 594

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Tim Eichenberg

AN ACT

RELATING TO THE LICENSING OF REAL ESTATE PROFESSIONALS;
PROVIDING FOR THE REVOCATION OF A LICENSE OR THE DENIAL OF
ISSUANCE, RENEWAL OR REINSTATEMENT OF A REAL ESTATE LICENSE OF
A PERSON CONVICTED OF CERTAIN CRIMES.

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

Section 1. Section 61-29-12 NMSA 1978 (being Laws 1959,
Chapter 226, Section 11, as amended) is amended to read:

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

A. The commission may refuse to issue a license or
may suspend, revoke, limit or condition a license if the
applicant or licensee has by false or fraudulent
representations obtained a license or, in performing or
attempting to perform any of the actions specified in Chapter

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1 61, Article 29 NMSA 1978, an applicant or licensee has:

2 (1) made a substantial misrepresentation;

3 (2) pursued a continued and flagrant course of
4 misrepresentation; made false promises through agents,
5 salespersons, advertising or otherwise; or used any trade name
6 or insignia of membership in any real estate organization of
7 which the licensee is not a member;

8 (3) paid or received a rebate, profit,
9 compensation or commission to or from any unlicensed person,
10 except the licensee's principal or other party to the
11 transaction, and then only with that principal's written
12 consent;

13 (4) represented or attempted to represent a
14 qualifying broker other than a qualifying broker with whom the
15 licensee is associated without the express knowledge and
16 consent of that qualifying broker;

17 (5) failed, within a reasonable time, to
18 account for or to remit any money coming into the licensee's
19 possession that belongs to others, commingled funds of others
20 with the licensee's own or failed to keep funds of others in an
21 escrow or trustee account or failed to furnish legible copies
22 of all listing and sales contracts to all parties executing
23 them;

24 (6) been convicted in any court of competent
25 jurisdiction of a felony or any offense involving moral

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1 turpitude; provided that an applicant or licensee convicted of
2 criminal sexual penetration or related offenses shall be denied
3 issuance, renewal or reinstatement of a license and that the
4 license of a licensee shall be revoked unless the applicant or
5 licensee can provide to the commission compelling evidence of
6 rehabilitation;

7 (7) employed or compensated directly or
8 indirectly a person for performing any of the acts regulated by
9 Chapter 61, Article 29 NMSA 1978 who is not a licensed
10 qualifying broker or an associate broker; provided, however,
11 that a qualifying broker may pay a commission to a qualifying
12 broker of another state; provided further that the nonresident
13 broker shall not conduct in this state any of the negotiations
14 for which a fee, compensation or commission is paid except in
15 cooperation with a licensed qualifying broker of this state;

16 (8) failed, if a qualifying broker, to place
17 as soon after receipt as is practicably possible, after
18 securing signatures of all parties to the transaction, any
19 deposit money or other money received by the qualifying broker
20 in a real estate transaction in a custodial, trust or escrow
21 account, maintained by the qualifying broker in a bank or
22 savings and loan institution or title company authorized to do
23 business in this state, in which the funds shall be kept until
24 the transaction is consummated or otherwise terminated, at
25 which time a full accounting of the funds shall be made by the

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1 qualifying broker. Records relative to the deposit,
2 maintenance and withdrawal of the funds shall contain
3 information as may be prescribed by the rules of the
4 commission. Nothing in this paragraph prohibits a qualifying
5 broker from depositing nontrust funds in an amount not to
6 exceed the required minimum balance in each trust account so as
7 to meet the minimum balance requirements of the bank necessary
8 to maintain the account and avoid charges. The minimum balance
9 deposit shall not be considered commingling and shall not be
10 subject to levy, attachment or garnishment. This paragraph
11 does not prohibit a qualifying broker from depositing any
12 deposit money or other money received by the qualifying broker
13 in a real estate transaction with another cooperating broker
14 who shall in turn comply with this paragraph;

15 (9) failed, if an associate broker, to place
16 as soon after receipt as is practicably possible in the custody
17 of the associate broker's qualifying broker, after securing
18 signatures of all parties to the transaction, any deposit money
19 or other money entrusted to the associate broker by any person
20 dealing with the associate broker as the representative of the
21 qualifying broker;

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

24 (11) committed an act, whether of the same or
25 different character from that specified in this subsection,

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1 that is related to dealings as a qualifying broker or an
2 associate broker and that constitutes or demonstrates bad
3 faith, incompetency, untrustworthiness, impropriety, fraud,
4 dishonesty, negligence or any unlawful act; or

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

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

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