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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/13/09  
 SPONSOR Boitano LAST UPDATED 3/11/09 HB \_\_\_\_\_  
 SHORT TITLE Real Estate Broker Minimum Broker SB 398/aSPAC  
 ANALYST Wilson

### APPROPRIATION (dollars in thousands)

| Appropriation |      | Recurring<br>or Non-Rec | Fund<br>Affected |
|---------------|------|-------------------------|------------------|
| FY09          | FY10 |                         |                  |
|               | NFI  |                         |                  |

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General's Office (AGO)

Regulation & Licensing (RLD)

### SUMMARY

#### Synopsis of SPAC Amendment

The Senate Public Affairs Committee amendment to SB 398 adds that a licensee shall provide assistance to the licensee's customers or clients closing the transaction under the terms of the listing agreement.

#### Synopsis of Original Bill

Senate Bill 398 adds a new paragraph C to Section 61-29-10.2 of the Real Estate License law specifying that a real estate broker shall provide assistance to the broker's customers or clients by presenting all offers or counteroffers to buy or sell real estate to customers or clients in a timely manner and by assisting customers or clients in complying with the terms and conditions of the contract to buy or sell real estate and in closing the real estate transaction.

### FISCAL IMPLICATIONS

There are no known fiscal implications.

## **SIGNIFICANT ISSUES**

The language in the new paragraph C closely resembles the language in paragraphs D (1) and (2) Part 19 of the Real Estate Commission Rules pertaining to real estate broker duties to clients and customers. However, the language in the Commission Rule goes on to say, if the broker in the transaction is not providing the service, advice or assistance described in paragraphs (1) and (2) of Subsection D, the customer or client must agree in writing that the broker is not expected to provide such service, advice or assistance, and the broker shall disclose such agreement in writing to the other brokers involved in the transaction.

This additional language allows a broker and his or her client or customer by mutual written agreement to waive the broker duty to present all offers and counteroffers and to assist the customer or client in complying with the terms of contract and with closing the transaction and is not included in SB398.

In 2006, the Real Estate Commission promulgated a rule change that would have repealed the waiver language in Subsection D paragraphs (1) and (2) of the Commission Rules. Upon learning of the proposed rule, the U.S. Department of Justice issued a Civil Investigative Demand (CID) against the Real Estate Commission, alleging that repeal of the waiver language was a violation of the Sherman Anti-Trust Act in that it prohibited real estate brokers from engaging in real estate brokerage models other than the traditional full-service brokerage, and thereby restricted customer choices in brokerage services. The Commission never filed the proposed rule, and the above-referenced language remains in Subsection D paragraphs (1) and (2) of the Commission Rules.

There are a number of New Mexico licensed real estate brokerages that use the “limited service” brokerage model. A limited service brokerage charges a customer or client a flat fee to advertise their property on the Multiple Listing Service (MLS) of a local board or association of Realtors.

However, the limited service broker provides no other assistance to a customer or client, including the presentation of offers or counteroffers or any other assistance with the negotiation or closing of the transaction. Limited service brokerages most often work with “For Sale by Owner” properties, in which property owners seek to sell their own property without the assistance of a full service brokerage, thereby saving the cost of a broker commission on the sale of the real estate.

## **ADMINISTRATIVE IMPLICATIONS**

The affected agency will handle the enforcement of the provisions in this bill as part of ongoing responsibilities

## **RELATIONSHIP**

SB 398 relates to Senate Bill 98, Eliminate Real Estate Broker Exemption which changes the statute governing real estate brokers in New Mexico. SB 98 eliminates a provision that allows brokers who are (1) sixty-five years old or older, and (2) who have a minimum of 20 years’ continuously licensed experience in the selling, leasing, and managing of real property from being exempt from continuing education requirements.

**ALTERNATIVES**

RLD states that an alternative to SB398 would be to leave Section 61-29-10.2 of the Real Estate License Law intact and allow Part 16.61.19 D (1) and (2) of the Commission Rules to continue to permit real estate brokers and their clients and customers to mutually agree in writing to waive the broker duty to present offers and counteroffers and assist with the transaction to closing.

DW/mt