

1 SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR
2 SENATE BILL 125

3 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

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10 AN ACT

11 RELATING TO REAL ESTATE BROKERS; EXEMPTING AN AUCTIONEER
12 WORKING UNDER THE CONTROL OF A QUALIFYING BROKER FROM THE
13 LICENSURE REQUIREMENTS.

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

16 SECTION 1. Section 61-29-2 NMSA 1978 (being Laws 1999,
17 Chapter 127, Section 1, as amended) is amended to read:

18 "61-29-2. DEFINITIONS AND EXCEPTIONS.--

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

20 (1) "agency relationship" means the fiduciary
21 relationship created solely by an express written agency
22 agreement between a person and a brokerage, authorizing the
23 brokerage to act as an agent for the person according to the
24 scope of authority granted in that express written agreement
25 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 any person who auctions
9 or offers to auction real property;

10 [~~(4)~~] (5) "brokerage" means a licensed
11 qualifying broker and the licensed real estate business
12 represented by the qualifying broker and its affiliated
13 licensees;

14 [~~(5)~~] (6) "brokerage relationship" means the
15 legal or contractual relationship between a person and a
16 brokerage in a real estate transaction subject to the
17 jurisdiction of the commission;

18 [~~(6)~~] (7) "client" means a person who has
19 entered into an express written agreement with a brokerage for
20 real estate services subject to the jurisdiction of the
21 commission;

22 [~~(7)~~] (8) "commercial real estate" means real
23 estate that is zoned:

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

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1 (b) by a city or county to allow five or
2 more multifamily units; provided that all units are located on
3 a single parcel of land with a single legal description;

4 [~~(8)~~] (9) "commission" means the New Mexico
5 real estate commission;

6 [~~(9)~~] (10) "customer" means a person who uses
7 real estate services without entering into an express written
8 agreement with a brokerage subject to the jurisdiction of the
9 commission;

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

15 [~~(11)~~] (12) "license" means a qualifying
16 broker's license or an associate broker's license issued by the
17 commission;

18 [~~(12)~~] (13) "licensee" means a person holding
19 a valid qualifying broker's license or an associate broker's
20 license subject to the jurisdiction of the commission;

21 [~~(13)~~] (14) "nonresident licensee" means an
22 associate or qualifying broker holding a real estate license
23 issued by the commission and whose license application address
24 is not within the state of New Mexico;

25 [~~(14)~~] (15) "qualifying broker" means a

1 licensed real estate broker who has qualified a proprietorship,
2 corporation, partnership or association to do business as a
3 real estate brokerage in the state of New Mexico, who
4 discharges the responsibilities specific to a qualifying broker
5 as defined by the commission and who for compensation or other
6 consideration from another:

7 (a) lists, sells or offers to sell real
8 estate; buys or offers to buy real estate; or negotiates the
9 purchase, sale or exchange of real estate or options on real
10 estate;

11 (b) is engaged in managing property for
12 others;

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

15 (d) advertises or makes any
16 representation as being engaged in the business of buying,
17 selling, exchanging, renting, leasing, auctioning or dealing
18 with options on real estate for others as a whole or partial
19 vocation; or

20 (e) engages in the business of charging
21 an advance fee or contracting for collection of a fee in
22 connection with a contract under which the qualifying broker
23 undertakes primarily to promote the sale of real estate through
24 its listing in a publication issued primarily for that purpose
25 or for the purpose of referral of information concerning real

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1 estate to other qualifying brokers or associate brokers;

2 [~~(15)~~] (16) "real estate" means land,
3 improvements, leaseholds and other interests in real property
4 that are less than a fee simple ownership interest, whether
5 tangible or intangible; and

6 [~~(16)~~] (17) "transaction broker" means a
7 qualifying broker, associate broker or brokerage that provides
8 real estate services without entering into an agency
9 relationship.

10 B. A single act of a person in performing or
11 attempting to perform an activity described in Paragraph [~~(14)~~]
12 (15) of Subsection A of this section makes the person a
13 qualifying broker. A single act of a person in performing or
14 attempting to perform an activity described in Paragraph (3) of
15 Subsection A of this section makes the person an associate
16 broker.

17 C. The provisions of Chapter 61, Article 29 NMSA
18 1978 do not apply to:

19 (1) a person who as owner performs any of the
20 activities included in this section with reference to property
21 owned by the person, except when the sale or offering for sale
22 of the property constitutes a subdivision containing one
23 hundred or more parcels;

24 (2) the employees of the owner or the
25 employees of a qualifying broker acting on behalf of the owner,

1 with respect to the property owned, if the acts are performed
2 in the regular course of or incident to the management of the
3 property and the investments;

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

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

20 (5) the services rendered by an attorney at
21 law in the performance of the attorney's duties as an attorney
22 at law;

23 (6) a person acting in the capacity of a
24 receiver, trustee in bankruptcy, administrator or executor, a
25 person selling real estate pursuant to an order of any court or

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1 a trustee acting under a trust agreement, deed of trust or will
2 or the regular salaried employee of a trustee;

3 (7) the activities of a salaried employee of a
4 governmental agency acting within the scope of employment; ~~or~~

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

9 (9) an auctioneer working under the control of
10 a qualifying broker by means of an express written agreement
11 with the brokerage."