

HOUSE COMMERCE AND ECONOMIC DEVELOPMENT
COMMITTEE SUBSTITUTE FOR
HOUSE BILL 100

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

AN ACT

RELATING TO PROPERTY MANAGEMENT; PROVIDING THAT PROPERTY MANAGERS ARE SUBJECT TO GOVERNANCE BY THE NEW MEXICO REAL ESTATE COMMISSION; ADDING A DEFINITION; AMENDING A SECTION 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

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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 ~~(e)] (b) leases, rents or auctions or~~

21 offers to lease, rent or auction real estate;

22 [~~(d)] (c) 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)]~~ (d) engages in the business of
 3 charging an advance fee or contracting for collection of a fee
 4 in 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

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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

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) "property manager" means a person who
 13 manages property for others who is:

14 (a) an associate broker, an attorney at
 15 law or a contractor licensed pursuant to the Construction
 16 Industries Licensing Act; and

17 (b) subject to the rules of the
 18 commission;

19 [~~(16)~~] (17) "qualifying broker" means a
 20 licensed real estate broker who has qualified a proprietorship,
 21 corporation, partnership or association to do business as a
 22 real estate brokerage in the state of New Mexico, who
 23 discharges the responsibilities specific to a qualifying broker
 24 as defined by the commission and who for compensation or other
 25 consideration from another:

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1 (a) lists, sells or offers to sell real
2 estate; buys or offers to buy real estate; or negotiates the
3 purchase, sale or exchange of real estate or options on real
4 estate;

5 (b) is engaged in managing property for
6 others;

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

9 (d) advertises or makes any
10 representation as being engaged in the business of buying,
11 selling, exchanging, renting, leasing, auctioning or dealing
12 with options on real estate for others as a whole or partial
13 vocation; or

14 (e) engages in the business of charging
15 an advance fee or contracting for collection of a fee in
16 connection with a contract under which the qualifying broker
17 undertakes primarily to promote the sale of real estate through
18 its listing in a publication issued primarily for that purpose
19 or for the purpose of referral of information concerning real
20 estate to other qualifying brokers or associate brokers;

21 [~~(17)~~] (18) "real estate" means land,
22 improvements, leaseholds and other interests in real property
23 that are less than a fee simple ownership interest, whether
24 tangible or intangible; and

25 [~~(18)~~] (19) "transaction broker" means a

1 qualifying broker, associate broker or brokerage that provides
 2 real estate services without entering into an agency
 3 relationship.

4 B. A single act of a person in performing or
 5 attempting to perform an activity described in Paragraph [~~(16)~~]
 6 (17) of Subsection A of this section makes the person a
 7 qualifying broker. A single act of a person in performing or
 8 attempting to perform an activity described in Paragraph (3) of
 9 Subsection A of this section makes the person an associate
 10 broker.

11 C. The provisions of Chapter 61, Article 29 NMSA
 12 1978 do not apply to:

13 (1) a person who as owner performs any of the
 14 activities included in this section with reference to property
 15 owned by the person, except when the sale or offering for sale
 16 of the property constitutes a subdivision containing one
 17 hundred or more parcels;

18 (2) the employees of the owner or the
 19 employees of a qualifying broker acting on behalf of the owner,
 20 with respect to the property owned, if the acts are performed
 21 in the regular course of or incident to the management of the
 22 property and the investments;

23 (3) isolated or sporadic transactions not
 24 exceeding two transactions annually in which a person acts as
 25 attorney-in-fact under a duly executed power of attorney

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1 delivered by an owner authorizing the person to finally
2 consummate and to perform under any contract the sale, leasing
3 or exchange of real estate on behalf of the owner; and the
4 owner or attorney-in-fact has not used a power of attorney for
5 the purpose of evading the provisions of Chapter 61, Article 29
6 NMSA 1978;

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

14 (5) the services rendered by an attorney at
15 law in the performance of the attorney's duties as an attorney
16 at law;

17 (6) a person acting in the capacity of a
18 receiver, trustee in bankruptcy, administrator or executor, a
19 person selling real estate pursuant to an order of any court or
20 a trustee acting under a trust agreement, deed of trust or will
21 or the regular salaried employee of a trustee;

22 (7) the activities of a salaried employee of a
23 governmental agency acting within the scope of employment;

24 (8) persons who deal exclusively in mineral
25 leases or the sale or purchase of mineral rights or royalties

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1 in any case in which the fee to the land or the surface rights
 2 are in no way involved in the transaction; or

3 (9) an auctioneer; provided that payments to
 4 an auctioneer for services rendered in connection with an
 5 auction shall be made to the auctioneer by a qualifying broker,
 6 and prior to performing an auction of real estate, the
 7 auctioneer shall enter into a transaction-specific written
 8 agreement with a qualifying broker that includes:

9 (a) a description of the parties, the
 10 real estate and any additional information necessary to
 11 identify the specific transaction governed by the agreement;

12 (b) the terms of compensation between
 13 the auctioneer and the qualifying broker;

14 (c) the effective date and definitive
 15 termination date of the agreement; and

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

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