

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 493

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Phillip A. Griego

AN ACT

RELATING TO LICENSING; CREATING AND DEFINING CERTAIN
RELATIONSHIPS BETWEEN PERSONS PURSUANT TO THE REAL ESTATE
LICENSING LAW; REPEALING AND ENACTING SECTIONS OF THE NMSA
1978.

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

Section 1. Section 61-29-2 NMSA 1978 (being Laws 1959,
Chapter 226, Section 2, as amended) is repealed and a new
Section 61-29-2 NMSA 1978 is enacted to read:

"61-29-2. [NEW MATERIAL] DEFINITIONS AND EXCEPTIONS. --

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

(1) "agency relationship" or "brokerage
relationship" means the legal or contractual relationship
between a person and a brokerage in a real estate transaction
subject to the jurisdiction of the commission;

underscored material = new
[bracketed material] = del ete

underscored material = new
[bracketed material] = delete

1 (2) "broker" or "qualifying broker" means a
2 person who for compensation or other consideration from
3 another:

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

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

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

14 (d) 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 he undertakes primarily
17 to promote the sale of real estate through its listing in a
18 publication issued primarily for that purpose or for the
19 purpose of referral of information concerning real estate to
20 brokers;

21 (3) "brokerage" means a licensed qualifying
22 broker, the licensed real estate business represented by the
23 broker and its affiliated licensees;

24 (4) "client" means a buyer, seller, landlord
25 or tenant who has entered into an express written agreement

underscored material = new
[bracketed material] = delete

1 with a brokerage for real estate services subject to the
2 jurisdiction of the commission;

3 (5) "commission" means the New Mexico real
4 estate commission created pursuant to Section 61-29-4 NMSA
5 1978;

6 (6) "customer" means a buyer, seller,
7 landlord or tenant who uses real estate services without
8 entering into an express written agreement with a brokerage
9 subject to the jurisdiction of the commission;

10 (7) "license" means a real estate broker's
11 license issued by the commission;

12 (8) "licensee" means anyone holding a valid
13 real estate license subject to the jurisdiction of the
14 commission;

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

19 (10) "real estate" means land, improvements,
20 leaseholds and other interests in real property that are less
21 than a fee simple ownership interest, whether tangible or
22 intangible; and

23 (11) "real estate salesperson" means a person
24 who for compensation or other valuable consideration is
25 associated with or engaged under contract by a broker to

underscored material = new
[bracketed material] = delete

1 participate in an activity described in Subparagraphs (a)
2 through (d) of Paragraph (2) of this subsection or to carry on
3 the broker's business as a whole or partial vocation.

4 B. A single act of a person in performing or
5 attempting to perform an activity described in Subparagraphs
6 (a) through (d) of Paragraph (2) of Subsection A of this
7 section makes the person a broker. A single act of a person
8 in performing or attempting to perform an activity described
9 in Paragraph (11) of Subsection A of this section makes the
10 person a real estate salesperson.

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

13 (1) a person who as owner or lessor performs
14 any of the activities included in this section with reference
15 to property owned or leased by him, the employees of the owner
16 or lessor or the employees of a broker acting on behalf of the
17 owner or lessor, with respect to the property owned or leased,
18 if the acts are performed in the regular course of or incident
19 to the management of the property and the investments, except
20 where when the sale or offering for sale or the lease or
21 offering for lease of the property constitutes a subdivision
22 containing one hundred or more parcels;

23 (2) 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

underscored material = new
[bracketed material] = delete

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
6 29 NMSA 1978;

7 (3) 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 (4) the services rendered by an attorney at
15 law in the performance of his duties as an attorney at law;

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

21 (6) the activities of a salaried employee of
22 a governmental agency acting within the scope of his
23 employment; or

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

underscored material = new
[bracketed material] = delete

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

3 Section 2. A new section of Chapter 61, Article 29 NMSA
4 1978 is enacted to read:

5 "[NEW MATERIAL] BROKERAGE RELATIONSHIPS-- CREATION. --

6 A. For all regulated real estate transactions
7 first executed on or after January 1, 2000, no agency
8 relationship between a buyer, seller, landlord or tenant and a
9 brokerage shall exist unless the buyer, seller, landlord or
10 tenant and the brokerage agree, in writing, to the agency
11 relationship.

12 B. The commission shall promulgate rules governing
13 the rights and responsibilities of clients or customers and
14 the rights, responsibilities and duties of the brokerage in an
15 agency relationship. "

16 Section 3. A new section of Chapter 61, Article 29 NMSA
17 1978 is enacted to read:

18 "[NEW MATERIAL] BROKERAGE RELATIONSHIP-- DISCLOSURE. -- A
19 licensee shall give to a prospective buyer, seller, landlord
20 or tenant at the first substantive contact a brokerage
21 relationship disclosure in accordance with requirements
22 established by the commission. "

1 FORTY- FOURTH LEGISLATURE

SB 493/a

2 FIRST SESSION, 1999

6 February 22, 1999

8 Mr. President:

10 Your PUBLIC AFFAIRS COMMITTEE, to whom has been
11 referred

13 SENATE BILL 493

15 has had it under consideration and reports same with
16 recommendation that it DO PASS, amended as follows:

18 1. On page 6, line 11, after the period, insert "No type
19 of agency relationship may be assumed by a buyer, seller,
20 landlord, tenant or licensee, or created orally or by
21 implication. "
22

23 2. On page 6, between lines 22 and 23, insert the
24 following new section:
25

. 126325. 1

underscored material = new
[bracketed material] = delete

FORTY- FOURTH LEGISLATURE
FIRST SESSION, 1999

SPAC/SB 493

Page 8

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

"NEW MATERIAL BROKERAGE NONAGENCY RELATIONSHIPS--
CREATION.--

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

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

C. The commission shall promulgate rules governing the
rights and responsibilities of clients and customers and the

. 126325. 1

underscored material = new
[bracketed material] = delete

FORTY- FOURTH LEGISLATURE
FIRST SESSION, 1999

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SPAC/SB 493

Page 9

rights, responsibilities and duties of the brokerage in a
nonagency relationship. All licensees will perform the duties
of licensees as prescribed by the commission. "".,

and thence referred to the CORPORATIONS & TRANSPORTATION
COMMI TTEE.

Respectfully submitted,

Shannon Robi nson, Chai rman

Adopted _____ Not

Adopted _____

(Chi ef Clerk)

(Chi ef Clerk)

Date _____

underscored material = new
[bracketed material] = delete

FORTY- FOURTH LEGISLATURE
FIRST SESSION, 1999

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SPAC/SB 493

Page 10

The roll call vote was 5 For 0 Against

Yes: 5

No: 0

Excused: Boitano, Howes, Stockard, Smith

Absent: None

S0493PA1

. 127852. 1ms

. 126325. 1

underscored material = new
[bracketed material] = delete

1 FORTY- FOURTH LEGISLATURE

SB 493/a

2 FIRST SESSION, 1999

6 February 22, 1999

8 Mr. President:

10 Your PUBLIC AFFAIRS COMMITTEE, to whom has been
11 referred

13 SENATE BILL 493

15 has had it under consideration and reports same with
16 recommendation that it DO PASS, amended as follows:

18 1. On page 6, line 11, after the period, insert "No type
19 of agency relationship may be assumed by a buyer, seller,
20 landlord, tenant or licensee, or created orally or by
21 implication. "
22

23 2. On page 6, between lines 22 and 23, insert the
24 following new section:
25

. 126325. 1

underscored material = new
[bracketed material] = delete

FORTY- FOURTH LEGISLATURE
FIRST SESSION, 1999

SPAC/SB 493

Page 12

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

" NEW MATERIAL BROKERAGE NONAGENCY RELATIONSHIPS--
CREATION. --

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

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

C. The commission shall promulgate rules governing the
rights and responsibilities of clients and customers and the

. 126325. 1

underscored material = new
[bracketed material] = delete

FORTY- FOURTH LEGISLATURE
FIRST SESSION, 1999

SPAC/SB 493

Page 13

rights, responsibilities and duties of the brokerage in a
nonagency relationship. All licensees will perform the duties
of licensees as prescribed by the commission. " ". ,
and thence referred to the CORPORATIONS & TRANSPORTATION
COMMITTEE.

Respectfully submitted,

Shannon Robinson, Chairman

Adopted _____ Not

Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

. 126325. 1

underscored material = new
[bracketed material] = delete

FORTY- FOURTH LEGI SLATURE
FIRST SESSI ON, 1999

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SPAC/SB 493

Page 14

The roll call vote was 5 For 0 Against

Yes: 5

No: 0

Excused: Boitano, Howes, Stockard, Smith

Absent: None

S0493PA1

. 127852. 1ms

. 126325. 1

underscored material = new
[bracketed material] = delete

1 FORTY-FOURTH LEGISLATURE

SB 493/a

2 FIRST SESSION, 1999

6 February 22, 1999

8 Mr. President:

10 Your PUBLIC AFFAIRS COMMITTEE, to whom has been
11 referred

13 SENATE BILL 493

15 has had it under consideration and reports same with
16 recommendation that it DO PASS, amended as follows:

18 1. On page 6, line 11, after the period, insert "No type
19 of agency relationship may be assumed by a buyer, seller,
20 landlord, tenant or licensee, or created orally or by
21 implication."
22

23 2. On page 6, between lines 22 and 23, insert the
24 following new section:
25

. 126325. 1

underscored material = new
[bracketed material] = delete

FORTY- FOURTH LEGISLATURE
FIRST SESSION, 1999

SPAC/SB 493

Page 16

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

"[NEW MATERIAL] BROKERAGE NONAGENCY RELATIONSHIPS--
CREATION. --

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

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

C. The commission shall promulgate rules governing the
rights and responsibilities of clients and customers and the

. 126325. 1

underscored material = new
[bracketed material] = delete

FORTY- FOURTH LEGISLATURE
FIRST SESSION, 1999

SPAC/SB 493

Page 17

rights, responsibilities and duties of the brokerage in a
nonagency relationship. All licensees will perform the duties
of licensees as prescribed by the commission. " ". ,
and thence referred to the CORPORATIONS & TRANSPORTATION
COMMITTEE.

Respectfully submitted,

Shannon Robinson, Chairman

Adopted _____ Not

Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

. 126325. 1

underscored material = new
[bracketed material] = delete

FORTY- FOURTH LEGI SLATURE
FIRST SESSI ON, 1999

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SPAC/SB 493

Page 18

The roll call vote was 5 For 0 Against

Yes: 5

No: 0

Excused: Boitano, Howes, Stockard, Smith

Absent: None

S0493PA1

. 127852. 1ms

. 126325. 1

underscored material = new
[bracketed material] = delete

1 FORTY-FOURTH LEGISLATURE
2 FIRST SESSION, 1999
3
4
5

6 March 16, 1999
7

8 Mr. Speaker:
9

10 Your BUSINESS AND INDUSTRY COMMITTEE, to whom has
11 been referred
12

13 SENATE BILL 493, as amended
14

15 has had it under consideration and reports same with
16 recommendation that it DO PASS.

17 Respectfully submitted,
18

19
20
21 _____
22 Fred Luna, Chairman
23
24
25

1 FORTY-FOURTH LEGISLATURE
2 FIRST SESSION, 1999

3 HBIC/SB 493a

Page 20

4 Adopted _____ Not Adopted _____
5 (Chief Clerk) (Chief Clerk)

6
7 Date _____

8
9 The roll call vote was 11 For 0 Against

10 Yes: 11

11 Excused: Hobbs

12 Absent: None

13
14 J: \99BillSWP\S0493
15
16
17
18
19
20
21
22
23
24
25

. 126325. 1

underscored material = new
[bracketed material] = delete

1 FORTY- FOURTH LEGISLATURE
2 FIRST SESSION, 1999

3
4 March 16, 1999

5
6
7 Mr. Speaker:

8
9 Your BUSINESS AND INDUSTRY COMMITTEE, to whom has
10 been referred

11 SENATE BILL 493, as amended

12
13 has had it under consideration and reports same with
14 recommendation that it DO PASS.

15
16 Respectfully submitted,

17
18
19
20 _____
21 Fred Luna, Chairman
22
23
24
25

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

3 HBIC/SB 493a

Page 22

4 Adopted _____ Not Adopted _____
5 (Chief Clerk) (Chief Clerk)

7 Date _____

9 The roll call vote was 11 For 0 Against

10 Yes: 11

11 Excused: Hobbs

12 Absent: None

14 J: \99BillSWP\S0493

underscored material = new
[bracketed material] = delete