

1 SENATE BILL 125

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

4 Pat Woods

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9  
10 AN ACT

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

14  
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

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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,

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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 licensee by means of an express written agreement."