ARTICLE 29
Real Estate Brokers and Salesmen

61-29-1. Prohibition.

It is unlawful for a person to engage in the business or act in the capacity of real estate associate broker or qualifying broker within New Mexico without a license issued by the commission. A person who engages in the business or acts in the capacity of an associate broker or a qualifying broker in New Mexico, except as otherwise provided in Section 61-29-2 NMSA 1978, with or without a New Mexico real estate broker's license, has thereby submitted to the jurisdiction of the state and to the administrative jurisdiction of the commission and is subject to all penalties and remedies available for a violation of any provision of Chapter 61, Article 29 NMSA 1978.

History: 1953 Comp., § 67-24-19, enacted by Laws 1959, ch. 226, § 1; 1965, ch. 304, § 1; 2001, ch. 163, § 1; 2005, ch. 35, § 1; 2013, ch. 167, § 1.

ANNOTATIONS

The 2013 amendment, effective June 14, 2013, clarified the prohibited activities; in the first sentence, after "engage in the business", added "or", and after "act in the capacity of", deleted "advertise or display in any manner or otherwise assume to engage in the business of, or act as an", added "real estate" and in the second sentence, after "with or without a New Mexico" added "real estate broker’s".

The 2005 amendment, effective January 1, 2006, prohibits a person from engaging in business or acting as an associate broker or a qualifying broker without a license.

The 2001 amendment, effective July 1, 2001, substituted "a person to engage" for "any person, business association or corporation to engage"; deleted "real estate" preceding "broker"; deleted "New Mexico real estate" preceding "commission"; and added the last sentence of the subsection.

Brokerage can encompass sale of interest in real estate contract. — Commission had jurisdiction over real estate broker's sale of an interest in a real estate contract since broker was a real estate broker as defined in Section 61-29-2A(4) NMSA 1978 and represented himself as such and acted in that capacity. *Elliott v. N.M. Real Estate Comm'n*, 1985-NMSC-078, 103 N.M. 273, 705 P.2d 679.

Payment of a finder's fee to an unlicensed real estate broker prohibited. — Where a Chapter 7 trustee filed a motion to sell debtors' house, and where the terms of the proposed sale included a proposed finder's fee for creditor, an unlicensed real estate broker who introduced the buyers of the house to the trustee, the proposed finder's fee was prohibited by this section, because the creditor, as an unlicensed broker in New Mexico, may not collect a finder's fee or any other compensation from the sale of real estate. *In re Waggoner*, 605 B.R. 222 (Bankr. D. N.M. 2019).

Generally, as to advertisements violating section. — It is a violation of this section for a person, business firm or corporation to advertise the disposition of real estate using the terms "Real Estate Agency," "Realty," "Agency" or "Broker" without first being licensed as a real estate broker as is defined in Section 61-29-2 NMSA 1978. It is not really important whether or not the person, business firm or corporation doing the advertising uses the terms "Real Estate Agency," "Realty," "Agency" or "Broker." The real question is: have they advertised themselves as offering a service which comes within the definition of a real estate broker and a real estate salesman? 1966 Op. Att'y Gen. No. 66-16.

A person who auctions the real estate of another person for compensation is acting as an associate or qualifying broker. — The Real Estate Brokers and Salesmen Act (act), 61-29-1 to 61-29-29 NMSA 1978, specifically lists auctioning or the offer to auction real estate, when performed for another and for compensation, as conduct that brings one within the definition of associate broker and qualifying broker, and therefore a person who auctions or offers for auction the real estate of another person for compensation is acting as an associate or qualifying broker under the act and must possess a broker's license issued by the New Mexico real estate commission, regardless of whether the auctioneer is hired by the seller or by a licensed broker. *Necessity of a Real Estate Broker's License to Auction Real Estate* (5/24/16), Att'y Gen. Adv. Ltr. 2016-05.

Rule governing advertisements applies to advertisements of real estate auctions. — The New Mexico real estate commission has adopted a rule governing real estate advertising that requires all real estate advertising be a true and factual representation of the property and real estate services being advertised, and because auctioning or offering for auction the real estate of another for compensation is a real estate service that requires a broker's license, it follows that advertisements regarding the sale of real estate by auction comes under this rule. *Necessity of a Real Estate Broker's License to Auction Real Estate* (5/24/16), Att'y Gen. Adv. Ltr. 2016-05.

Law reviews. — For note, "Vendor and Purchaser - Increased Risks of Forfeiture and Malpractice Resulting from the Use of Real Estate Contracts: Albuquerque National Bank v. Albuquerque Ranch Estates, Inc.," see 15 N.M.L. Rev. 99 (1985).

For 1984-88 survey of New Mexico administrative law, 19 N.M.L. Rev. 575 (1990).

For annual survey of New Mexico Law of Property, see 20 N.M.L. Rev. 373 (1990).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 12 Am. Jur. 2d Brokers §§ 6 to 12.

Validity of statute or ordinance requiring real estate brokers to procure license, 39 A.L.R.2d 606.

Application of state antitrust laws to activities or practices of real estate agents or associations, 22 A.L.R.4th 103.

Attorney's right to act as real estate broker without having been licensed as such, 23 A.L.R.4th 230.

Right to private action under state statutes or regulations governing real estate brokers or salesmen, 28 A.L.R.4th 199.

Real estate brokers: statute or regulation forbidding use of prizes, gifts, or premiums as inducement to secure customers, 62 A.L.R.4th 1044.

Broker's liability for fraud or misrepresentation concerning development or nondevelopment of nearby property, 71 A.L.R.4th 511.

Liability of vendor or real-estate broker for failure to disclose information concerning off-site conditions affecting value of property, 41 A.L.R.5th 157.

12 C.J.S. Brokers §§ 14, 18.

61-29-1.1. Recompiled.

ANNOTATIONS

Recompilations. — Former 61-29-1.1 NMSA 1978, relating to registration of time share projects and licensing of salespersons, enacted by Laws 1986, ch. 97, § 2, has been recompiled as 47-11-2.1 NMSA 1978.

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 for real estate services subject to the jurisdiction of the commission;

(2) "agent" means the brokerage authorized, solely by means of an express written agreement, to act as a fiduciary for a person and to provide real estate services that are subject to the jurisdiction of the commission; in the case of an associate broker, "agent" means the person who has been authorized to act by that associate broker's qualifying broker;

(3) "associate broker" means a person who, for compensation or other valuable consideration, is associated with or engaged under contract by a qualifying broker to carry on the qualifying broker's business as a whole or partial vocation, and:

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

(b) is engaged in managing property for others;

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

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

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

(4) "auctioneer" means a person who auctions or offers to auction real property;

(5) "brokerage" means a licensed qualifying broker and the licensed real estate business represented by the qualifying broker and its affiliated licensees;

(6) "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;

(7) "client" means a person who has entered into an express written agreement with a brokerage for real estate services subject to the jurisdiction of the commission;

(8) "commercial real estate" means real estate that is zoned:

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

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

(9) "commission" means the New Mexico real estate commission;

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

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

(12) "license" means a qualifying broker's license or an associate broker's license issued by the commission;

(13) "licensee" means a person holding a valid qualifying broker's license or an associate broker's license subject to the jurisdiction of the commission;

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

(15) "property management" means real estate services as specified by a management agreement that include marketing, showing, renting and leasing of real property; collection and disbursement of funds on behalf of the owner; supervision of employees and vendors; coordination of maintenance and repairs; management of tenant relations; and preparation of leases or rental agreements, financial reports and other documents. "Property management" does not mean inspections of property, repairs and maintenance incidental to the sale and marketing of property as authorized by the owner or the management of a condominium or homeowner association or advertising or taking reservations for vacation rental properties;

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

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

(b) is engaged in managing property for others;

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

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

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

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

(18) "transaction broker" means a qualifying broker, associate broker or brokerage that provides real estate services without entering into an agency relationship.

B. A single act of a person in performing or attempting to perform an activity described in Paragraph (16) of Subsection A of this section makes the person a qualifying broker. A single act of a person in performing or attempting to perform an activity described in Paragraph (3) of Subsection A of this section makes the person an associate broker.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

History: 1978 Comp., § 61-29-2, enacted by Laws 1999, ch. 127, § 1; 2003, ch. 36, § 1; 2005, ch. 35, § 2; 2011, ch. 85, § 1; 2013, ch. 167, § 2; 2014, ch. 27, § 1; 2019, ch. 90, § 1; 2021, ch. 106, § 1.

ANNOTATIONS

The 2021 amendment, effective July 1, 2021, defined "property management" as used in Chapter 61, Article 29 NMSA 1978; and in Subsection A, added new Paragraph A(15) and redesignated the succeeding paragraphs accordingly.

The 2019 amendment, effective June 14, 2019, defined "auctioneer" as used in Chapter 61, Article 29 NMSA 1978, and exempted an auctioneer working under the control of a qualifying broker from the licensure requirements, and provided requirements for the agreement between the auctioneer and the qualifying broker; in Subsection A, added a new Paragraph A(4) and redesignated former Paragraphs A(4) through A(16) as Paragraphs A(5) through A(17), respectively; in Subsection B, after the first occurrence of "Paragraph", deleted "(14)" and added "(15)"; and in Subsection C, added Paragraph C(9).

The 2014 amendment, effective May 21, 2014, added definitions of "commercial real estate", "foreign broker", and "nonresident licensee" to provide for foreign brokers acting as qualifying or associate brokers with respect to commercial real estate; and in Subsection A, added Paragraphs (7), (10) and (13).

The 2013 amendment, effective June 14, 2013, changed the definition of "associate broker" and added the definition of "qualifying broker"; in Paragraph (3) of Subsection A, in the introductory sentence, after "qualifying broker", deleted "to participate in an activity described in Paragraph (4) of this subsection or"; added Subparagraphs (a) through (e) of Paragraph (3) of Subsection A; deleted former Paragraph (4) of Subsection A, which defined "broker" and "qualifying broker"; in Paragraph (6) of Subsection A, after "means a", deleted "buyer, seller, landlord or tenant" and added "person"; in Paragraph (8) of Subsection A, after "means a", deleted "buyer, seller, landlord or tenant" and added "person"; added Paragraph (11) of Subsection A; deleted former Paragraph (13) of Subsection A, which defined "real estate salesperson"; and in Paragraph (2) of Subsection C, after "property and the investments", deleted "except when the sale or offering for sale of the property constitutes a subdivision containing one hundred or more parcels".

The 2011 amendment, effective July 1 2011, in Subsection A, included property managers in the definition of "broker"; and in Subsection C, provided that Chapter 61, Article 29 NMSA 1978 applies when a sale constitutes a subdivision of property containing one hundred or more parcels.

The 2005 amendment, effective January 1, 2006, redefines “agency relationship” to mean the fiduciary relationship created solely by a written agreement between a person and a brokerage; defines “agent” to mean the brokerage authorized solely by a written agreement; defines “associate broker” to mean a person who is associated with or engaged under contract by a qualifying broker; defines “brokerage relationship” as the legal or contractual relationship between a person and a brokerage in a real estate transaction; redefines “licensee” to mean a person holding a qualifying broker’s or associate broker’s license; and defines “transaction broker” to mean a qualifying broker, associate broker or brokerage that provides real estate services without entering into an agency relationship.

The 2003 amendment, effective January 1, 2004, substituted "contractual" for "contractural" following "means the legal or" near the middle of Paragraph A(1); deleted "created pursuant to Section 61-29-4 NMSA 1978" at the end of Paragraph A(5); inserted "or a real estate salesperson's license" following "real estate broker's license" in the middle of Paragraph A(7); substituted "a person" for "anyone" following "licensee means" near the beginning of Paragraph A(8); deleted Paragraph A(9) and redesignated the subsequent paragraphs accordingly; and substituted "(10)" for "(11)" following "Paragraph" near the end of Subsection B.

Texas broker was acting as a broker in New Mexico. — Where plaintiff, who was a licensed real estate broker in Texas, agreed to buy a ranch in New Mexico and the owners agreed to pay plaintiff a six percent commission; defendants, who were licensed brokers in New Mexico, assisted plaintiff conduct due diligence in connection with the purchase of the ranch; plaintiff and defendants subsequently agreed that if defendants found a third-party purchaser of the ranch, that plaintiff would not buy the ranch and plaintiff and defendants would share the sales commission; defendants told plaintiff about a possible buyer of the ranch and plaintiff directed defendants to contact the owner of the ranch about the prospective buyer; the ranch was not listed for sale; and the only way defendants knew the ranch was for sale was through their contact with plaintiff, plaintiff was a broker within the meaning of Section 61-29-2 NMSA 1978 because plaintiff was a finder or middleman who brought the ranch owner and the buyer together with the assistance of defendants. *PC Carter Co. v. Miller*, 2011-NMCA-052, 149 N.M. 660, 253 P.3d 950.

Broker buying or selling property for himself. — The commission lacks jurisdiction over a real estate broker who is buying or selling property for himself, unless he holds himself out as a broker. *Vihstadt v. Real*

Estate Comm'n, 1988-NMSC-003, 106 N.M. 641, 748 P.2d 14.

Burden on broker when acting for himself. — A licensed broker has the burden of showing that there is no possibility of misunderstanding or confusion as to his status when he purports to act for himself. *Poorbaugh v. N.M. Real Estate Comm'n*, 1978-NMSC-033, 91 N.M. 622, 578 P.2d 323.

Hiring of note broker for sale of real estate contract. — Because the seller of a real estate contract, who hired a note broker to handle the sale, was not acting as a real estate broker during the sale, the commission lacked jurisdiction to revoke the seller's license for misrepresentation. *Vihstadt v. Real Estate Comm'n*, 1988-NMSC-003, 106 N.M. 641, 748 P.2d 14.

Whether landowner made representation as to being real estate broker is factual determination to be made by the trier of fact. *Poorbaugh v. N.M. Real Estate Comm'n*, 1978-NMSC-033, 91 N.M. 622, 578 P.2d 323.

Fiduciary duties of salesperson extended to broker. — Because a real estate salesperson must work under a broker, when a principal buyer or seller engages a real estate salesperson as an agent, the principal also engages the salesperson's qualifying broker as an agent, thus extending the fiduciary duty owed to the principal buyer or seller up the salesperson's chain of command to the broker. Although agency fiduciary obligations and liabilities may extend from a salesperson to the qualifying broker, the fiduciary duties of one real estate salesperson are not attributable to another salesperson operating under the same qualifying broker unless one salesperson is at fault in appointing, supervising or cooperating with the other. *Moser v. Bertram*, 1993-NMSC-040, 115 N.M. 766, 858 P.2d 854.

Broker status not changed by power of attorney. — Where a real estate broker entered into a real estate transaction as a broker, he was not exempt from the jurisdiction of the commission under the "attorney in fact" exception in Subsection D (now C(4)), even though he was given the power of attorney to enable him to complete the transaction without the owners being present. *Elliott v. N.M. Real Estate Comm'n*, 1985-NMSC-078, 103 N.M. 273, 705 P.2d 679.

Activities not excepted. — Activities did not fall within exception provided for in Subsection D (now C). *Bosque Farms Home Ctr., Inc. v. Tabet Lumber Co.*, 1988-NMSC-027, 107 N.M. 115, 753 P.2d 894.

No license required for arranging investments. — Arranging investments in real estate contracts is not a transaction for which a real estate broker's or salesperson's license is required. *Garcia v. N.M. Real Estate Comm'n*, 1989-NMCA-034, 108 N.M. 591, 775 P.2d 1308, cert. denied, 108 N.M. 624, 776 P.2d 846.

A person who auctions the real estate of another person for compensation is acting as an associate or qualifying broker. — The Real Estate Brokers and Salesmen Act (act), 61-29-1 to 61-29-29 NMSA 1978, specifically lists auctioning or the offer to auction real estate, when performed for another and for compensation, as conduct that brings one within in the definition of associate broker and qualifying broker, and therefore a person who auctions or offers for auction the real estate of another person for compensation is acting as an associate or qualifying broker under the act and must possess a broker's license issued by the New Mexico real estate commission, regardless of whether the auctioneer is hired by the seller or by a licensed broker. *Necessity of a Real Estate Broker's License to Auction Real Estate* (5/24/16), Att'y Gen. Adv. Ltr. 2016-05.

Rule governing advertisements applies to advertisements of real estate auctions. — The New Mexico real estate commission has adopted a rule governing real estate advertising that requires all real estate advertising be a true and factual representation of the property and real estate services being advertised, and because auctioning or offering for auction the real estate of another for compensation is a real estate service that requires a broker's license, it follows that advertisements regarding the sale of real estate by auction comes under this rule. *Necessity of a Real Estate Broker's License to Auction Real Estate* (5/24/16), Att'y Gen. Adv. Ltr. 2016-05.

Broker to supervise salespeople. — This section and Section 61-29-11 NMSA 1978 express a clear legislative mandate that brokers, as the persons principally responsible to the public, actually be in a position to supervise the actions of their salespeople. At the same time, the statutes do not require the broker himself to engage in business full-time. 1980 Op. Att'y Gen. No. 80-22.

The exemption contained in Subsection D (now C(4)) applies only to those persons holding the power of attorney and who are not engaged in business as real estate brokers. 1965 Op. Att'y Gen. No. 65-122.

Law reviews. — For article, "Attachment in New Mexico - Part I," see 1 Nat. Res. J. 303 (1961).

For 1984-88 survey of New Mexico administrative law, 19 N.M.L. Rev. 575 (1990).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 12 Am. Jur. 2d Brokers § 1.

Who is real estate broker within meaning of statute, 167 A.L.R. 774.

Effect of statement of real estate broker to prospective purchaser that property may be bought for less than list price as breach of duty to vendor, 17 A.L.R.2d 904.

Duty of real estate broker to disclose that prospective purchaser is a relative, 26 A.L.R.2d 1307.

Payment to broker authorized to sell real property as payment to principal, 30 A.L.R.2d 805.

Power of real estate broker to execute contract of sale in behalf of principal, 43 A.L.R.2d 1014.

Liability of vendor's real-estate broker or agent to purchaser or prospect for misrepresenting or concealing offer or acceptance, 55 A.L.R.2d 342.

Power of real estate broker to bind principal by representations as to character, condition, location, quantity or title of property, 58 A.L.R.2d 10.

Liability of real estate broker for accepting note, check or property, rather than cash, as earnest money, 59 A.L.R.2d 1455.

Misrepresentation as basis of real estate broker's liability for damages or losses sustained by vendor responsible to vendee on account thereof, 61 A.L.R.2d 1237.

Modern view as to right of real estate broker to recover commission from seller-principal where buyer defaults under valid contract of sale, 12 A.L.R.4th 1083.

Right of attorney, as such, to act or become licensed to act as real estate broker, 23 A.L.R.4th 230.

Real-estate broker's liability to purchaser for misrepresentation or nondisclosure of physical defects in property sold, 46 A.L.R.4th 546.

12 C.J.S. Brokers § 2.

61-29-3. Criminal offender's character evaluation.

The provisions of the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] shall govern any consideration of criminal records required or permitted by Sections 61-29-1 through 61-29-18 NMSA 1978.

History: 1953 Comp., § 67-24-20.1, enacted by Laws 1974, ch. 78, § 29.

ANNOTATIONS

Criminal Offender Employment Act to be followed in suspension or revocation action. — The provisions of the Criminal Offender Employment Act must be followed by the real estate commission in any action by the commission to suspend or revoke a broker's or salesperson's license because of a conviction of a felony or misdemeanor involving moral turpitude. 1982 Op. Att'y Gen. No. 82-02.

Convicted felon, while on parole, is under no disqualification that would prevent him from applying for a license to practice barbering or to practice as a real estate broker or any other trade, profession or occupation in this state. 1958 Op. Att'y Gen. No. 58-214 (rendered under former law).

61-29-4. Creation of commission; powers and duties.

A. The "New Mexico real estate commission" is created. The commission shall be appointed by the governor and shall consist of five members who shall have been residents of the state for three consecutive years immediately prior to their appointment, four of whom shall have been associate brokers or qualifying brokers licensed in New Mexico and one of whom shall be a member of the public who has never been licensed as an associate broker or a qualifying broker; provided that not more than one member shall be from any one county within the state. The members of the commission shall serve for a period of five years or until their successors are appointed and qualified. The governor may remove a member for cause. In the event of vacancies, the governor shall appoint members to complete unexpired terms.

B. The commission shall possess all the powers and perform all the duties prescribed by Chapter 61, Article 29 NMSA 1978 and as otherwise provided by law, and it is expressly vested with power and authority to promulgate rules in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] and enforce those rules to carry out the provisions of that article.

History: 1953 Comp., § 67-24-21, enacted by Laws 1959, ch. 226, § 3; 1978, ch. 203, § 1; 1983, ch. 261, § 1; 1987, ch. 90, § 2; 1990, ch. 75, § 25; 2003, ch. 22, § 1; 2003, ch. 408, § 30; 2005, ch. 35, § 3; 2022, ch. 39, § 96.

ANNOTATIONS

Cross references. — For Uniform Licensing Act, *see* 61-1-1 NMSA 1978.

The 2022 amendment, effective May 18, 2022, clarified that the New Mexico real estate commission is required to follow the provisions of the State Rules Act when promulgating rules; and after "power and authority to", deleted "make" and added "promulgate rules in accordance with the State Rules Act", and deleted "Prior to a final action on a proposed change or amendment to the rules of the commission, the commission may publish notice of the proposed action in its official publication, distribute the publication to each active licensee and give the time and place for a public hearing on the proposed changes. The hearing shall be held at least thirty days prior to a proposed final action. Changes or amendments to the rules shall be filed in accordance with the procedures of the State Rules Act and shall become effective thirty days after notification to all active licensees of the filing of the changes or amendments.".

The 2005 amendment, effective January 1, 2006, requires that real estate commission members be a licensed associate broker or a qualifying broker; provides that in the event of vacancies, the governor shall appoint members to complete the unexpired terms; and provides authority to promulgate rules only.

2003 amendments. — Substantively identical amendments to this section were enacted by Laws 2003, ch. 22, § 1, effective June 20, 2003, and Laws 2003, ch. 408, § 30, effective July 1, 2003, deleting "called 'the commission' in Chapter 61, Article 29 NMSA 1978" following "real estate commission" at the end of the first sentence of the section; deleting "and regulations" following "amendments to the rules" near the beginning of the ninth sentence; and deleting "The commission may employ any staff it deems necessary to assist in carrying out its duties and in keeping its records" following "changes or amendments." at the end of the section. Chapter 408, § 30 also made minor grammatical changes. This section is set out as amended by Laws 2003, ch. 408, § 30. See 12-1-8 NMSA 1978.

The 1990 amendment, effective May 16, 1990, inserted "and as otherwise provided by law" following "Chapter 61, Article 29 NMSA 1978" in the sixth sentence.

Commission members subject to discretionary removal. — Since the governor may remove any person appointed by him or his predecessor, he can remove any member of the real estate commission at any time without notice or hearing. 1963 Op. Att'y Gen. No. 63-134.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits § 51.

53 C.J.S. Licenses § 9.

61-29-4.1. Additional powers of commission; continuing education programs; minimum requirements.

The commission shall adopt rules providing for continuing education courses in selling, leasing or managing residential, commercial and industrial property as well as courses in basic real estate law and practice and other courses prescribed by the commission. The regulations shall require that every licensee except licensees who were already exempted from continuing education requirements prior to July 1, 2011, as a condition of license renewal, successfully complete a minimum of thirty classroom hours of instruction every three years in courses approved by the commission. The rules may prescribe areas of specialty or expertise and may require that part of the classroom instruction be devoted to courses in the area of a licensee's specialty or expertise.

History: 1978 Comp., § 61-29-4.1, enacted by Laws 1985, ch. 89, § 1; 1993, ch. 253, § 1; 2005, ch. 35, § 4; 2011, ch. 85, § 2; 2013, ch. 167, § 3.

ANNOTATIONS

The 2013 amendment, effective June 14, 2013, clarified the continuing education requirements; and in the second sentence, after "requirements prior to", deleted "the effective date of this 2011 act" and added "July 1, 2011" and after "successfully complete", added "a minimum".

The 2011 amendment, effective July 1 2011, required licensees over the age of sixty-five who were not exempt from the requirement prior to the enactment of Laws 2011, ch. 85 to comply with continuing education requirements.

The 2005 amendment, effective January 1, 2006, requires the real estate commission to adopt rules to provide for continuing education courses and for areas of specialty or expertise, but did not change the second sentence that requires the real estate commission to promulgate regulations to require the completion of thirty six hours of instruction every three years.

The 1993 amendment, effective June 18, 1993, deleted the A designation from the beginning of the section.

61-29-4.2. Additional powers of the commission; professional liability insurance; minimum coverage.

A. In addition to the powers and duties granted to the commission pursuant to the provisions of Sections 61-29-4 and 61-29-4.1 NMSA 1978, the commission may adopt rules that require professional liability insurance coverage and may establish the minimum terms and conditions of coverage, including limits of coverage and permitted exceptions. If adopted by the commission, the rules shall require every applicant for an active license and licensee who applies for renewal of an active license to provide the commission with satisfactory evidence that the applicant or licensee has professional liability insurance coverage that meets the minimum terms and conditions required by commission rule.

B. The commission is authorized to solicit sealed, competitive proposals from insurance carriers to provide a group professional liability insurance policy that complies with the terms and conditions established by commission rule. The commission may approve one or more policies that comply with the commission rules; provided that the maximum annual premium shall not exceed five hundred dollars ($500) for a licensee, that the minimum coverage shall not be less than one hundred thousand dollars ($100,000) for an individual claim and not less than a five-hundred-thousand-dollar ($500,000) aggregate limit per policy and that the deductible shall not be greater than one thousand dollars ($1,000).

C. Rules adopted by the commission shall permit an active licensee to satisfy any requirement for professional liability insurance coverage by purchasing an individual policy.

D. Rules adopted by the commission shall provide that there shall not be a requirement for a licensee to have professional liability insurance coverage during a period when a group policy, as provided in Subsection B of this section, is not in effect.

History: 1978 Comp., § 61-29-4.2, enacted by Laws 2001, ch. 216, § 1; 2005, ch. 35, § 5; 2008, ch. 18, § 1; 2013, ch. 167, § 4.

ANNOTATIONS

The 2013 amendment, effective June 14, 2013, increased the limit on liability insurance premiums; and in Subsection B, in the second sentence, after "shall not exceed", deleted "three hundred dollars ($300)" and added "five hundred dollars ($500)".

The 2008 amendment, effective July 1, 2008, increased the maximum annual premium from $200 to $300.

The 2005 amendment, effective January 1, 2006, increases the amount for the maximum annual premium that may be charged each licensee for coverage under a group professional liability insurance policy obtained by the real estate commission.

61-29-4.3. Regulation and licensing department; administratively attached.

The commission is administratively attached to the regulation and licensing department.

History: Laws 2001, ch. 163, § 12.

61-29-4.4. Additional powers of commission; fingerprinting and criminal history background checks.

A. All applicants for licensure as provided for in Chapter 61, Article 29 NMSA 1978 shall:

(1) be required to provide fingerprints only upon initial licensure on two fingerprint cards for submission to the federal bureau of investigation to conduct a national criminal history background check and to the department of public safety to conduct a state criminal history background check;

(2) pay the cost of obtaining the fingerprints and criminal history background checks; and

(3) have the right to inspect or challenge the validity of the records resulting from the background check if the applicant is denied licensure as established by commission rule.

B. Electronic live scans may be used for conducting criminal history background checks.

C. Criminal history records obtained by the commission pursuant to the provisions of this section are confidential. The commission is authorized to use criminal history records obtained from the federal bureau of investigation and the department of public safety to conduct background checks on applicants for certification as provided for in Chapter 61, Article 29 NMSA 1978.

D. Criminal history records obtained by the commission pursuant to the provisions of this section shall not be used for any purpose other than conducting background checks. Criminal history records obtained pursuant to the provisions of this section and the information contained in those records shall not be released or disclosed to any other person or agency, except pursuant to a court order or with the written consent of the person who is the subject of the records.

E. A person who releases or discloses the criminal history records or information contained in those records in violation of the provisions of this section is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

History: Laws 2005, ch. 35, § 6; 2011, ch. 85, § 3; 2019, ch. 209, § 7.

ANNOTATIONS

The 2019 amendment, effective July 1, 2020, provided that applicants for licensure shall be required to provide fingerprints only upon initial licensure; in Subsection A, Paragraph A(1), after "provide fingerprints", added "only upon initial licensure", and after "criminal history", added "background".

The 2011 amendment, effective July 1 2011, rewrote the section to require fingerprinting and criminal history background checks of applicants for licensure.

61-29-5. Organization of commission.

The commission shall organize by electing a president, vice president and secretary from its members. A majority of the commission shall constitute a quorum and may exercise all powers and duties devolving upon it and do all things necessary to carry into effect the provisions of Chapter 61, Article 29 NMSA 1978. The secretary of the commission shall keep a record of its proceedings; a register of persons licensed as associate brokers and qualifying brokers, showing the name and place of business of each and the date and number of each person's license; and a record of all licenses issued, denied, suspended or revoked. This record shall be open to public inspection at all reasonable times.

History: 1953 Comp., § 67-24-22, enacted by Laws 1959, ch. 226, § 4; 2001, ch. 163, § 2; 2005, ch. 35, § 7.

ANNOTATIONS

The 2005 amendment, effective January 1, 2006, requires the secretary of the real estate commission to keep a register of persons licensed as associate brokers and qualifying brokers.

The 2001 amendment, effective July 1, 2001, substituted "Chapter 61, Article 29 NMSA 1978" for "this act" and "salespersons" for "salesmen".

61-29-5.1. Recompiled.

ANNOTATIONS

Recompilations. — Former 61-29-5.1 NMSA 1978, relating to a register of time share projects and applicants for certificates of registration, enacted by Laws 1986, ch. 97, § 13, has been recompiled as 47-11-11.1 NMSA 1978.

61-29-6. Meeting of the commission.

The commission shall meet at least once each quarter-year at such time and place as may be designated by the commission president, and special meetings may be held upon five days' written notice to each of the commission members by the commission president.

History: 1953 Comp., § 67-24-23, enacted by Laws 1959, ch. 226, § 5; 2005, ch. 35, § 8.

ANNOTATIONS

The 2005 amendment, effective January 1, 2006, made style changes.

61-29-7. Reimbursement and expenses.

Each member of the commission shall receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

History: 1953 Comp., § 67-24-24, enacted by Laws 1959, ch. 226, § 6; 1963, ch. 43, § 28; 1965, ch. 304, § 3; 2003, ch. 22, § 2; 2003, ch. 408, § 31.

ANNOTATIONS

2003 amendments. — Identical amendments to this section were enacted by Laws 2003, ch. 22, § 2, effective June 20, 2003, and Laws 2003, ch. 408, § 31, effective July 1, 2003, deleting the former second and third sentences concerning the appointment of an administrator, employment of staff and purchase of supplies. The section is set out as amended by Laws 2003, ch. 408, § 31. See NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 53 C.J.S. Licenses § 37.

61-29-8. License fees; disposition.

A. Except as provided in Section 61-1-34 NMSA 1978, the following fees shall be established and charged by the commission and paid into the real estate commission fund:

(1) for each examination, a fee established by the commission based on competitive bids for examination services submitted to the commission in response to a commission request for proposals, not to exceed ninety-five dollars ($95.00);

(2) for each qualifying broker's license issued, a fee not to exceed two hundred seventy dollars ($270) and for each renewal thereof, a fee not to exceed two hundred seventy dollars ($270);

(3) for each associate broker's license issued, a fee not to exceed two hundred seventy dollars ($270) and for each renewal thereof, a fee not to exceed two hundred seventy dollars ($270);

(4) subject to the provisions of Paragraph (10) of this subsection, for each change of place of business or change of employer or contractual associate, a transfer fee not to exceed twenty dollars ($20.00);

(5) for each duplicate license, where the license is lost or destroyed and affidavit is made thereof, a fee not to exceed twenty dollars ($20.00);

(6) for each license history, a fee not to exceed twenty-five dollars ($25.00);

(7) for copying of documents by the commission, a fee not to exceed one dollar ($1.00) per copy;

(8) for each license law and rules booklet, a fee not to exceed ten dollars ($10.00) per booklet;

(9) for each hard copy or electronic list of licensed associate brokers and qualifying brokers, a fee not to exceed actual costs up to fifty dollars ($50.00);

(10) for each license reissued for an associate broker because of change of address of the qualifying broker's office or death of the qualifying broker when a successor qualifying broker is replacing the decedent and the associate broker remains in the office or because of a change of name of the office or the entity of the qualifying broker, a fee in an amount not to exceed twenty dollars ($20.00) to be paid by the qualifying broker or successor qualifying broker as the case may be; but if there are eleven or more affected associate brokers in the qualifying broker's office, the total fee paid to effect reissuance of all of those licenses shall not exceed two hundred dollars ($200);

(11) for each application to the commission to become an approved sponsor of prelicensing and continuing education courses, a fee not to exceed five hundred dollars ($500) and for each renewal thereof, a fee not to exceed five hundred dollars ($500);

(12) for each application to the commission to become an approved instructor of prelicensing and continuing education courses, a fee not to exceed seventy dollars ($70.00) per course; and

(13) for each application to the commission to renew certification as a commission-approved instructor, a fee not to exceed one hundred dollars ($100).

B. All fees set by the commission shall be set by rule and only after all requirements have been met as prescribed by Chapter 61, Article 29 NMSA 1978. Any changes or amendments to the rules shall be filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].

C. The commission shall deposit all money received by it from fees in accordance with the provisions of Chapter 61, Article 29 NMSA 1978 with the state treasurer, who shall keep that money in a separate fund to be known as the "real estate commission fund", and money so deposited in that fund is appropriated to the commission for the purpose of carrying out the provisions of Section 61-29-4 NMSA 1978 or to maintain the real estate recovery fund as required by the Real Estate Recovery Fund Act [61-29-20 to 61-29-29 NMSA 1978] and shall be paid out of the fund upon the vouchers of the executive secretary of the commission or the executive secretary's designee; provided that the total fees and charges collected and paid into the state treasury and any money so deposited shall be expended only for the purposes authorized by Chapter 61, Article 29 NMSA 1978.

History: 1953 Comp., § 67-24-25, enacted by Laws 1959, ch. 226, § 7; 1977, ch. 295, § 1; 1983, ch. 261, § 2; 1987, ch. 90, § 3; 1990, ch. 75, § 26; 1992, ch. 21, § 1; 1995, ch. 143, § 1; 2001, ch. 163, § 3; 2003, ch. 22, § 3; 2005, ch. 35, § 9; 2011, ch. 85, § 4; 2020, ch. 6, § 56.

ANNOTATIONS

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans; and in Subsection A, in the introductory clause, added "Except as provided in Section 61-1-34 NMSA 1978".

The 2011 amendment, effective July 1 2011, imposed a fee for examination services and changed the fee for a copy of the list of brokers from twenty dollars to the actual cost of the list, but not more than fifty dollars.

The 2005 amendment, effective January 1, 2006, specifies the fees for the issuance and re-issuance of qualifying broker's and associate broker's licenses and eliminates the provision for a proportionate refund of fees for the issuance and renewal of licenses for less that a three year period.

The 2003 amendment, effective June 20, 2003, substituted "two hundred seventy dollars ($270)" for "one hundred eighty dollars ($180)" in two places in Subsection A(2); in Subsection A(3) added "real estate" preceding "salesperson's license issued" near the beginning, substituted "two hundred seventy dollars ($270)" for "one hundred eighty dollars ($180)" in two places; in Subsection A(10), substituted "for each license reissued for a real estate salesperson" for "when a license must be reissued for a salesperson" at the beginning, deleted "the licensed broker or successor licensed broker as the case may be shall pay to the commission as the affected salesperson's license reissue" near the middle, and inserted "to be paid by the licensed broker or successor broker as the case may be" following "twenty dollars $20.00" near the middle; and added Paragraphs A(11), (12), and (13).

The 2001 amendment, effective July 1, 2001, substituted "a fee not to exceed" for "a fee of" throughout the section; in Subsection A, inserted "established and" in the preliminary language; increased the examination fee in Paragraph (1) from sixty dollars to ninety-five dollars; deleted "set by the commission" following "a fee" in Paragraphs (7) to (9); deleted "additional" preceding "license law" in Paragraph (8); substituted "hard copy or electronic list" for "additional directory"; deleted Paragraph (10), relating to the fee for supplements to the directory, and renumbered the remaining paragraph accordingly; inserted "an amount not to exceed" preceding "twenty dollars" in the present Paragraph (10); and substituted "executive secretary of the commission or his designee" for "president and secretary of the commission" in Subsection C.

The 1995 amendment, effective July 1, 1995, in Subsection A, increased the licensing fees from sixty dollars to one hundred and eighty dollars and deleted "annual" preceding "renewal" in Paragraphs (2) and (3), added the proviso at the beginning of Paragraph (4), added Paragraph (11), and made minor stylistic changes throughout the subsection; and added Subsection D.

The 1992 amendment, effective May 20, 1992, substituted the present section catchline for "License fees and disposition thereof "; substituted "sixty dollars ($60.00)" for "thirty dollars ($30.00)" in Subsection A(1); substituted "sixty dollars ($60.00)" for "forty dollars ($40.00)" in Subsections A(2) and A(3); substituted "twenty dollars ($20.00)" for "ten dollars ($10.00)" in Subsections A(4) and A(5); added Subsections A(6) to A(10); added present Subsection B; redesignated former Subsection B as present Subsection C; and in Subsection C, restructured the former four sentences as a single sentence, substituted "carrying out the provisions" for "paying the expenses of the commission incurred under the provisions" near the middle of the subsection, and made stylistic changes throughout the subsection.

The 1990 amendment, effective May 16, 1990, in Subsection B, divided the subsection into four sentences, deleted "special" before "fund" in the present second sentence and substituted "or as otherwise provided by law" for "and shall be paid out of the fund in the state treasury" at the end thereof and, in the present third sentence, added "Expenditures shall be made from the fund" at the beginning and deleted "provided that" at the end.

Cash balances not to revert to general fund. — Any possible or theoretical cash balances credited to the "real estate commission fund," which have accumulated pursuant to this section as the result of the collection of license fees and examination fees, should not revert to the general fund at the end of the licensing year. 1960 Op. Att'y Gen. No. 60-124.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 12 Am. Jur. 2d Brokers § 8.

Validity of statute or ordinance requiring real estate broker to procure license, 39 A.L.R.2d 606.

53 C.J.S. Licenses §§ 22, 71.

61-29-9. Qualifications for license.

A. Licenses shall be granted only to persons who meet the requirements for licensure prescribed by law and are deemed by the commission to be of good repute and competent to transact the business of a qualifying broker or an associate broker in a manner that safeguards the interests of the public.

B. An applicant for a qualifying broker's license or an associate broker's license shall have reached the age of majority. Each applicant for a qualifying broker's license or an associate broker's license shall have passed the real estate broker's examination approved by the commission and shall:

(1) furnish the commission with certificates of completion of ninety hours of classroom instruction consisting of commission-approved thirty-hour courses in real estate principles and practice, real estate law and broker basics; or

(2) in the case of an out-of-state applicant, furnish the commission with a certified license history from the real estate licensing jurisdiction in the state or states in which the applicant is currently or has been previously licensed as a real estate broker, or certificates of completion of those courses issued by the course sponsor or provider, certifying that the applicant has or had a license in that state and has completed the equivalent of sixty classroom hours of prelicensing education approved by that licensing jurisdiction in real estate principles and practice and real estate law. Upon receipt of such documentation, the commission may waive sixty hours of the ninety hours of prelicensing education required to take the New Mexico real estate broker's examination and may waive the national portion of the examination. The applicant shall complete the commission-approved thirty-hour broker basics class to be eligible to take the state portion of the New Mexico real estate broker's examination.

C. An applicant for a qualifying broker's license shall have passed the New Mexico real estate broker's examination and had an active associate broker's license or equivalent real estate license for at least two of the last five years immediately preceding application for a qualifying broker's license and shall furnish the commission with a certificate of completion of the commission-approved thirty-hour brokerage office administration course and any additional educational courses required by the commission by rule.

D. Notwithstanding Subsection C of this section, a qualifying broker shall not supervise associate brokers until the qualifying broker has had an active associate broker's or qualifying broker's license or equivalent real estate license for at least four years. Licensees who hold an active or inactive qualifying broker's license on January 1, 2018 are exempt from this subsection.

E. The commission shall require the information it deems necessary from every applicant to determine that applicant's honesty, trustworthiness and competency.

History: 1953 Comp., § 67-24-26, enacted by Laws 1959, ch. 226, § 8; 1965, ch. 304, § 4; 1973, ch. 40, § 1; 1977, ch. 295, § 2; 1979, ch. 94, § 1; 1983, ch. 261, § 3; 1999, ch. 272, § 35; 2001, ch. 163, § 4; 2003, ch. 22, § 4; 2003, ch. 329, § 1; 2005, ch. 35, § 10; 2011, ch. 85, § 5; 2013, ch. 167, § 5; 2017, ch. 131, § 1; 2021, ch. 70, § 12.

ANNOTATIONS

Cross references. — For age of majority, *see* 12-2A-3 and 28-6-1 NMSA 1978.

For the Parental Responsibility Act, *see* Chapter 40, Article 5A NMSA 1978.

The 2021 amendment, effective June 18, 2021, removed legal residency of the United States as a qualification for licensure as a qualifying broker or associate broker; and in Subsection B, after "license shall", deleted "be a legal resident of the United States and".

The 2017 amendment, effective January 1, 2018, authorized the real estate commission to require an applicant for a qualifying broker's license to complete additional educational courses, restricted a qualifying broker from supervising an associate broker until the qualifying broker has had an active associate or qualifying broker's license or equivalent real estate license for at least four years, and provided an exemption for certain licensees; in Subsection C, after "administration course", added "and any additional educational courses required by the commission by rule"; and added a new Subsection D and redesignated the succeeding subsection accordingly.

The 2013 amendment, effective June 14, 2013, provided for nonresident broker licensing; in Paragraph (1) of Subsection B, after "furnish the commission with", deleted "a certificate of completion of", after "ninety", deleted "classroom", after "hours of", added "classroom", and after "classroom instruction", deleted "in basic real estate courses approved by the commission, thirty hours of which shall have been a broker basics course" and added the remainder of the sentence; in Paragraph (2) of Subsection B, in the first sentence, added "in the case of an out-of-state applicant", after "commission with a", deleted language which provided for minimum continuing education requirements for out-of-state applicants and added the remainder of the sentence and added the second and third sentences; in Subsection C, after "broker's license shall have", deleted "been actively engaged in the real estate business as an associate broker or real estate salesperson" and added "passed the New Mexico real estate broker's examination and had an active associate broker's license or equivalent real estate license", and after "shall furnish the commission", deleted the remainder to the sentence which required the applicant to provide proof that the applicant had competed one hundred twenty hours of prelicensing courses and added "with a certificate of completion of the commission-approved thirty-hour brokerage office administration course"; and deleted former Subsection D, which provided the requirements for a salesperson to qualify for an associate broker's license.

The 2011 amendment, effective July 1 2011, removed corporations, partnerships and associations from broker licensing.

The 2005 amendment, effective January 1, 2006, specifies the qualifications for qualifying and associate broker licenses; eliminates the requirement that an applicant shall have been a real estate sales person; and requires that applicants complete ninety classroom hours of instruction, thirty hours of which are broker basic courses or provide a certificate that the applicant is a licensed real estate broker in another state and has completed ninety classroom hours in basic real estate courses; eliminates the requirements that the applicant furnish proof of equivalent experience; eliminates provisions for the real estate salesperson's license; requires that an applicant for a qualifying broker's license shall have been engaged in the real estate business as an associate broker or salespersons fro two years and have completed one hundred twenty hours of real estate courses; provides that the holder of a salesperson's license shall automatically qualify for an associate broker's license; and provides that to be eligible for a qualifying broker's license, a salesperson who automatically obtains an associate broker's license must pass a real estate broker's examination.

The 2003 amendment, effective July 1, 2003, deleted "and, except as provided in Section 61-29-14 NMSA 1978, be a resident of New Mexico" following "age of majority" near the middle of Subsection B; and added Subsection B(5).

The 2001 amendment, effective July 1, 2001, in Subsection B, deleted "real estate" preceding "broker's license" and inserted "have passed the real estate examination approved by the commission and shall" in the introductory language; substituted "a broker basics course" for "ninety classroom hours of instruction in basic real estate courses" in Paragraph (1); inserted "thirty hours of which shall have been a broker basics course" at the end of Paragraphs (3) and (4); inserted "have passed the real estate examination approved by the commission" in Subsection C; and substituted "may" for "shall be entitled to" in the second sentence of Subsection D.

The 1999 amendment, effective June 18, 1999, in the introductory language of Subsection B, substituted "and, except as provided in Section 61-29-14 NMSA 1978, be a resident of New Mexico" for "and have been an actual bona fide resident of New Mexico for six months next preceding the filing of application"; deleted "in New Mexico" following "salesperson" in Subsection B(1); and deleted "and be a resident of New Mexico preceding the filing of application" following "age of majority" in Subsection C.

Persons of "good repute". — The "good repute" requirement is interpreted to relate to honesty and trustworthiness. *Padilla v. Real Estate Comm'n*, 1987-NMSC-056, 106 N.M. 96, 739 P.2d 965 .

Suit for commission to be in name of licensed broker. — As an action to recover a real estate commission may only be brought in the name of the licensed broker, evidence showing corporation may be entitled to a license, or that an officer thereof had a license, was insufficient to enable corporation to bring suit in its own name. The corporation itself must be licensed to bring suit. *Star Realty Co. v. Sellers*, 1963-NMSC-140, 73 N.M. 207, 387 P.2d 319.

Section expressly authorizes broker to hold more than one license, provided that person is actively engaged in the real estate business of the partnership, corporation or other business association for which he is the qualifying party. The statute does not authorize an individual to have more than one license in an individual capacity. 1980 Op. Att'y Gen. No. 80-22.

Apprenticeship not necessary. — There is nothing in this article requiring that an apprenticeship be served before an applicant can apply for a broker's license; to the contrary, Section 61-29-10 NMSA 1978 specifically sets out the means to be used by the commission in determining applicant's reputation and competency. 1963 Op. Att'y Gen. No. 63-110.

When license under Mobile Housing Act (now Manufactured Housing Act) required. — When a real estate broker or salesperson acts as the agent for another person in the sale, exchange, lease or purchase of a mobile housing unit which is not attached to real property he is no longer engaging in the real estate business as defined in the Real Estate Licensing Act. Rather, he is engaged in the business of acting as an agent for another in the sale of a mobile housing unit and must be licensed as a dealer under the Mobile Housing Act (now Manufactured Housing Act). 1982 Op. Att'y Gen. No. 82-12.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 12 Am. Jur. 2d Brokers § 12.

12 C.J.S. Brokers § 19.

61-29-10. Application for license and examination.

A. All applications for licenses to act as qualifying brokers and associate brokers shall be made in writing to the commission and shall contain such data and information as may be required upon a form to be prescribed and furnished by the commission. The application shall be accompanied by:

(1) the recommendation of two reputable citizens who own real estate in the county in which the applicant resides, which recommendation shall certify that the applicant is of good moral character, honest and trustworthy; and

(2) the triennial license fee prescribed by the commission.

B. In addition to proof of honesty, trustworthiness and good reputation, an applicant shall pass a written examination approved by the commission. The examination shall be given at the time and places within the state as the commission shall prescribe; however, the examination shall be given not less than two times during each calendar year. The examination shall include business ethics, writing, composition, arithmetic, elementary principles of land economics and appraisals, a general knowledge of the statutes of this state relating to deeds, mortgages, contracts of sale, agency and brokerage and the provisions of Chapter 61, Article 29 NMSA 1978.

C. An applicant is not permitted to engage in the real estate business until the applicant has passed the approved examination, complied with the other requirements of Chapter 61, Article 29 NMSA 1978, and until a license has been issued to the applicant.

D. Notice of passing or failing to pass the examination shall be given to an applicant not later than three weeks following the date of the examination.

E. The commission may establish educational programs and procure qualified personnel, facilities and materials for the instruction of persons desiring to become qualifying brokers or associate brokers or desiring to improve their proficiency as qualifying brokers or associate brokers. The commission may inspect and accredit educational programs and courses of study and may establish standards of accreditation for educational programs conducted in this state. The expenses incurred by the commission in activities authorized pursuant to this subsection shall not exceed the total revenues received and accumulated by the commission.

History: 1953 Comp., § 67-24-27, enacted by Laws 1959, ch. 226, § 9; 1965, ch. 304, § 5; 1979, ch. 94, § 2; 1981, ch. 22, § 1; 2001, ch. 163, § 5; 2005, ch. 35, § 11.

ANNOTATIONS

Cross references. — For age of majority, see 28-6-1 NMSA 1978.

The 2005 amendment, effective January 1, 2006, provides for applications and examinations of applicants for licenses to act as qualifying broker and as associate broker.

The 2001 amendment, effective July 1, 2001, in Subsection A, deleted "New Mexico real estate" preceding "commission"; deleted "or has his place of business" following "resides" in Paragraph (1); in Paragraph (2), substituted "triennial" for "annual", deleted "which shall not be refunded in any event" from the end of the paragraph; in Subsection B, substituted "approved by" for "prepared by or under the supervision of" in the first sentence; removed the distinction between examinations for brokers and those for salesmen and deleted provisions that only applied to one examination or the other; in Subsection C, deleted "either as a broker or salesman" following "real estate business", inserted "approved" preceding "examination"; in Subsection E, substituted "brokers or salespersons" for "real estate brokers or salesmen" in two places, and substituted "activities authorized pursuant to" for "enabled under the provisions of" in the last sentence.

License required to sue for commission. — A person who simply brings two parties together in a real estate transaction must be licensed to sue for the recovery of a commission. To rule otherwise would be to violate the clear intent of the legislature in requiring that real estate "brokers" or salespersons be licensed. *Watts v. Andrews*, 1982-NMSC-080, 98 N.M. 404, 649 P.2d 472.

Apprenticeship not necessary. — There is nothing in this article requiring that an apprenticeship be served before an applicant can apply for a broker's license; to the contrary, this section specifically sets out the means to be used by the commission in determining applicant's reputation and competency. 1963 Op. Att'y Gen. No. 63-110.

Relicensing of out-of-state broker returning to state. — An individual who has been licensed as a resident real estate broker in the state of New Mexico, and who has established a residence in another state or country may subsequently return to New Mexico and be relicensed as a real estate broker upon payment of the necessary fee and filing of the required bond and meeting any other needed requirements without applying for and taking a broker's examination as required of applicants who have not previously been licensed as real estate brokers, provided that the real estate board in its discretion desires to waive the examination. 1958 Op. Att'y Gen. No. 58-186.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 12 Am. Jur. 2d Brokers § 12.

12 C.J.S. Brokers § 19.

61-29-10.1. Brokerage relationships; creation.

A. For all regulated real estate transactions first executed on or after January 1, 2000, no agency relationship between a buyer, seller, landlord or tenant and a brokerage shall exist unless the buyer, seller, landlord or tenant and the brokerage agree, in writing, to the agency relationship. No type of agency relationship may be assumed by a buyer, seller, landlord, tenant or licensee, or created orally or by implication.

B. A brokerage may provide real estate services to a client pursuant to an express written agreement that does not create an agency relationship and no agency duties will be imposed on the brokerage.

C. A brokerage may provide real estate services to a customer without entering into an express written agreement and without creating an agency relationship and no agency duties will be imposed on the brokerage.

D. The commission shall promulgate rules governing the rights of clients or customers and the rights, responsibilities and duties of a brokerage in those brokerage relationships that are subject to the jurisdiction of the commission.

History: Laws 1999, ch. 127, § 2; 2003, ch. 36, § 2.

ANNOTATIONS

The 2003 amendment, effective January 1, 2004, inserted present Subsections B and C and redesignated former Subsection B as present Subsection D; in present Subsection D deleted "and responsibilities" following "governing the rights" near the beginning and substituted "a brokerage in those brokerage relationships that are subject to the jurisdiction of the commission" for "the brokerage in an agency relationship" at the end.

61-29-10.2. Licensee's duties; disclosure.

A. Prior to the time a licensee generates or presents any written document that has the potential to become an express written agreement, the licensee shall give to a prospective buyer, seller, landlord or tenant a list of the licensee's duties that are in accordance with requirements established by the commission.

B. Licensees shall perform all duties that are established for licensees by the commission.

History: Laws 1999, ch. 127, § 3; 2003, ch. 36, § 3; 2005, ch. 35, § 12.

ANNOTATIONS

The 2005 amendment, effective January 1, 2006, provides that prior to the time a licensee prepares or presents a document that will be a written agreement, the licensee must provide a list of the licensee's duties.

The 2003 amendment, effective January 1, 2004, substituted "Licensee's Duties - Disclosure" for "Brokerage Relationship; Disclosure" in the heading; designated the former first paragraph as Subsection A and added Subsection B; and substituted "at the time when the parties enter into an express written agreement, a list of the licensee's duties that are in accordance with requirements established by the commission" for "at the first substantive contact a brokerage relationship disclosure in accordance with requirements established by the commission" at the end of Subsection A.

Transaction brokers duty of care includes disclosing the licensing status of recommended contractors. — Where defendant signed a listing agreement with plaintiffs to be their transaction broker for the sale of their home, and where, after a home inspection revealed problems with portions of the roof, defendant volunteered to find a roofer to perform the work, and where the roofer, who was not licensed or insured, performed the work negligently, causing a fire that destroyed plaintiffs' home, the district court did not err in concluding that defendant owed statutory duties independent of the listing agreement regarding the recommendation and procurement of the roofer or in concluding that the fire and plaintiffs' damages were a natural and continuous result from defendant's recommendation of an unqualified roofer, because the New Mexico real estate commission's established reasonable care as a duty for transaction brokers; this duty includes disclosing the licensing status for recommended contractors. *LM Insurance v. I Do ABQ*, 2023-NMCA-021.

District judge did not err in awarding attorney fees where there was a connection between negligence claims and listing agreement. — Where defendant signed a listing agreement with plaintiffs to be their transaction broker for the sale of their home, and where, after a home inspection revealed problems with portions of the roof, defendant volunteered to find a roofer to perform the work, and where the roofer, who was not licensed or insured, performed the work negligently, causing a fire that destroyed plaintiffs' home, and where the district court concluded that defendant owed statutory duties independent of the listing agreement regarding the recommendation and procurement of the roofer and that the fire and plaintiffs' damages were a natural and continuous result from defendant's recommendation of an unqualified roofer, the district court did not err in awarding attorney fees based on the listing agreement's attorney fee provision, because plaintiffs' negligence claims were related to the parties listing agreement and resulted in litigation, as contemplated by the attorney fees provision. *LM Insurance v. I Do ABQ*, 2023-NMCA-021.

61-29-10.3. Repealed.

ANNOTATIONS

Repeals. — Laws 2003, ch. 36, § 4 repealed 61-29-10.3, as enacted by Laws 1999, ch. 127, § 4, relating to brokerage nonagency relationships, effective January 1, 2004. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com.*

61-29-11. Issuance, renewal and surrender of licenses.

A. The commission shall issue to each qualified applicant a license in the form and size prescribed by the commission.

B. The license shall show the name and address of the licensee. An associate broker's license shall show the name of the qualifying broker by whom the associate broker is engaged. The commission shall deliver or mail the license of the associate broker to the qualifying broker by whom the associate broker is engaged, and the qualifying broker shall display the license at the brokerage from which the associate broker will be conducting real estate business on behalf of the brokerage. The license of the associate broker shall remain in the custody and control of the qualifying broker as long as the associate broker is engaged by that qualifying broker.

C. Any qualifying broker's or associate broker's license suspended or revoked by an order, stipulated agreement or settlement agreement approved by the commission shall be surrendered to the commission by the broker upon the delivery of the order to the broker by the commission, or on the effective date of the order. All real-estate-related activity conducted under such license shall cease for the duration of the license suspension or revocation, and any associate broker licenses hanging with a qualifying broker whose license is suspended or revoked shall be automatically placed on inactive status until a new qualifying broker or a qualifying broker in charge is designated.

D. Every license shall be renewed every three years on or before the last day of the month following the licensee's month of birth. Upon written request for renewal by the licensee, the commission shall certify renewal of a license if there is no reason or condition that might warrant the refusal of the renewal of a license. The licensee shall provide proof of compliance with continuing education requirements and pay the renewal fee. If a licensee has not made application for renewal of license, furnished proof of compliance with continuing education requirements and paid the renewal fee by the license renewal date, the license shall expire. The commission may require a person whose license has expired to apply for a license as if the person had not been previously licensed under Chapter 61, Article 29 NMSA 1978 and further require that the person be reexamined. The commission shall require a person whose license has expired to pay when the person applies for a license, in addition to any other fee, a late fee. If during a period of one year from the date the license expires the person or the person's spouse is either absent from this state on active duty military service or the person is suffering from an illness or injury of such severity that the person is physically or mentally incapable of making application for a license, payment of the late fee and reexamination shall not be required by the commission if, within three months of the person's permanent return to this state or sufficient recovery from illness or injury to allow the person to make an application, the person makes application to the commission for a license. A copy of that person's or that person's spouse's military orders or a certificate from the applicant's physician shall accompany the application. A person excused by reason of active duty military service, illness or injury as provided for in this subsection may make application for a license without imposition of the late fee. All fees collected pursuant to this subsection shall be disposed of in accordance with the provisions of Section 61-29-8 NMSA 1978. The revocation of a qualifying broker's license automatically suspends every associate broker's license granted to any person by virtue of association with the qualifying broker whose license has been revoked, pending a change of qualifying broker. Upon the naming of a new qualifying broker, the suspended license shall be reactivated without charge if granted during the three-year renewal cycle.

E. A qualifying broker shall conduct brokerage business under the trade name and from the brokerage address registered with the commission. Every brokerage shall have a qualifying broker in charge. The license of the qualifying broker and each associate broker associated with that qualifying broker shall be prominently displayed in each brokerage office. The address of the office shall be designated in the qualifying broker's license, and a license issued shall not authorize the licensee to transact real estate business at any other address. In case of removal from the designated address, the licensee shall make application to the commission before the removal or within ten days thereafter, designating the new location of the licensee's office and paying the required fee, whereupon the commission shall issue a license for the new location if the new location complies with the terms of Chapter 61, Article 29 NMSA 1978. A qualifying broker shall maintain a sign at the brokerage office of such size and content as the commission prescribes.

F. When an associate broker is discharged or terminates association or employment with the qualifying broker with whom the associate broker is associated, the qualifying broker shall deliver or mail the associate broker's license to the commission within forty-eight hours. The commission shall hold the license on inactive status. It is unlawful for an associate broker to perform any of the acts authorized by Chapter 61, Article 29 NMSA 1978 either directly or indirectly under authority of an inactive license after the associate broker's association with a qualifying broker has been terminated and the associate broker's license has been returned to the commission until the appropriate fee has been paid and the license has been reissued and reactivated by the commission.

History: 1953 Comp., § 67-24-28, enacted by Laws 1959, ch. 226, § 10; 1965, ch. 304, § 6; 1977, ch. 295, § 3; 1979, ch. 94, § 3; 1980, ch. 82, § 11; 1981, ch. 22, § 2; 1983, ch. 261, § 4; 1985, ch. 89, § 2; 1987, ch. 90, § 4; 1993, ch. 253, § 2; 1995, ch. 143, § 2; 2001, ch. 163, § 7; 2003, ch. 22, § 5; 2005, ch. 35, § 13; 2013, ch. 167, § 6.

ANNOTATIONS

The 2013 amendment, effective June 14, 2013, provided for the surrender of suspended and revoked licenses; and added Subsection C.

The 2005 amendment, effective January 1, 2006, requires that an associate broker’s license show the name of the qualifying broker by whom the associate broker is engaged; requires the real estate commission to send the associate broker’s license to the qualifying broker by which the associate broker is engaged; requires the qualifying broker to display the associate broker’s license at the brokerage; provides that the associate broker’s license remains in the custody of the qualifying broker as long as the associate broker is engaged by the qualifying broker; provides that the revocation of a qualifying broker’s license suspends the license of every associate broker engaged by the qualifying broker; requires qualifying brokers to conduct brokerage business under the trade name and at the address registered with the real estate commission; requires that the qualifying broker’s license and the licenses of associate brokers be displayed at the brokerage office; and provides that if an associate broker ceases to be engaged by the qualifying broker, the qualifying broker must send the associate broker’s license to the real estate commission to be held in inactive status.

The 2003 amendment, effective June 20, 2003, in Subsection C, deleted "of one hundred dollars ($100)" at the end of the sixth sentence; in Subsection D, substituted "within this state a fixed office that conforms" for "a fixed office within this state which shall be so located as to conform" following "broker shall maintain" near the beginning of the first sentence, and inserted "real estate" preceding "salesperson" near the middle of the third sentence.

The 2001 amendment, effective July 1, 2001, deleted "permanent" preceding "license" in Subsection A; in Subsection B, deleted "real estate" preceding "broker" in two places; in Subsection C, substituted the reactivation provision and conditions thereto for suspended licenses for the provision that a new license will be issued in the event that the real estate salesperson's license is suspended, and will be free if re-issued in the same year it was granted; in Subsection D, deleted "under Chapter 61, Article 29 NMSA 1978" following "operated by a licensed broker", inserted "who is a natural person", deleted "or under contract to" following "associated with", deleted "except a licensed branch office" following "any other address", in Subsection E, deleted "immediately" preceding "deliver" and inserted "within forty-eight hours" in the first sentence, substituted "an inactive license" for "such license" in the second sentence; and deleted Subsection F, concerning the renewal of licenses within a certain time period in order to coordinate certain requirements.

The 1995 amendment, effective July 1, 1995, in Subsection C, rewrote the first sentence which read "Every license shall be subject to annual renewal on the last day of the licensee's month of birth", made a related change in the third sentence, and deleted "annual" and "annually" preceding "renewal" throughout the subsection; made a stylistic change in Subsection D; and added Subsection F.

The 1993 amendment, effective June 18, 1993, inserted "or his spouse" and "the person" preceding "is suffering" in the sixth sentence and substituted "that person or his spouse's" for "the person's" in the seventh sentence, in Subsection C; deleted "for cancellation" from the end of the first sentence, inserted the second sentence, and substituted "to the commission" for "for a cancellation" in the last sentence, in Subsection E; and made stylistic changes in Subsections C and D.

Fiduciary duties of salesperson extended to broker. — Because a real estate salesperson must work under a broker, when a principal buyer or seller engages a real estate salesperson as an agent, the principal also engages the salesperson's qualifying broker as an agent, thus extending the fiduciary duty owed to the principal buyer or seller up the salesperson's chain of command to the broker. Although agency fiduciary obligations and liabilities may extend from a salesperson to the qualifying broker, the fiduciary duties of one real estate salesperson are not attributable to another salesperson operating under the same qualifying broker unless one salesperson is at fault in appointing, supervising or cooperating with the other. *Moser v. Bertram*, 1993-NMSC-040, 115 N.M. 766, 858 P.2d 854.

Brokers must supervise their salespeople. — Section 61-29-2 NMSA 1978 and this section express a clear legislative mandate that brokers, the persons principally responsible to the public, actually be in a position to supervise the actions of their salespeople. At the same time, the statutes do not require the broker himself to engage in business full-time. 1980 Op. Att'y Gen. No. 80-22.

Relicensing of out-of-state broker returning to state. — An individual who has been licensed as a resident real estate broker in the state of New Mexico, and who has established a residence in another state or country may subsequently return to New Mexico and be relicensed as a real estate broker upon payment of the necessary fee and filing of the required bond and meeting any other needed requirements without applying for and taking a broker's examination as required of applicants who have not previously been licensed as real estate brokers, provided that the real estate board in its discretion desires to waive the examination. 1958 Op. Att'y Gen. No. 58-186.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 12 Am. Jur. 2d Brokers §§ 21, 24, 26, 27, 29.

12 C.J.S. Brokers §§ 16, 20.

61-29-12. Refusal, suspension or revocation of license for causes enumerated.

A. In accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978], the commission may refuse to issue a license or may suspend, revoke, limit or condition a license if the applicant or licensee has, by false or fraudulent representations, obtained a license or, in performing or attempting to perform any of the actions specified in Chapter 61, Article 29 NMSA 1978, an applicant or licensee has:

(1) made a substantial misrepresentation;

(2) pursued a continued and flagrant course of misrepresentation; made false promises through agents, salespersons, advertising or otherwise; or used any trade name or insignia of membership in any real estate organization of which the licensee is not a member;

(3) paid or received a rebate, profit, compensation or commission to or from any unlicensed person, except the licensee's principal or other party to the transaction, and then only with that principal's written consent;

(4) represented or attempted to represent a qualifying broker other than a qualifying broker with whom the licensee is associated without the express knowledge and consent of that qualifying broker;

(5) failed, within a reasonable time, to account for or to remit any money coming into the licensee's possession that belongs to others, commingled funds of others with the licensee's own or failed to keep funds of others in an escrow or trustee account or failed to furnish legible copies of all listing and sales contracts to all parties executing them;

(6) been convicted in any court of competent jurisdiction of a felony or any offense involving moral turpitude;

(7) employed or compensated, directly or indirectly, a person for performing any of the acts regulated by Chapter 61, Article 29 NMSA 1978 who is not a licensed qualifying broker or an associate broker; provided, however, that a qualifying broker may pay a commission to a qualifying broker of another state as provided in Section 61-29-16.1 NMSA 1978;

(8) failed, if a qualifying broker, to place as soon after receipt as is practicably possible, after securing signatures of all parties to the transaction, any deposit money or other money received by the qualifying broker in a real estate transaction in a custodial, trust or escrow account, maintained by the qualifying broker in a bank or savings and loan institution or title company authorized to do business in this state, in which the funds shall be kept until the transaction is consummated or otherwise terminated, at which time a full accounting of the funds shall be made by the qualifying broker. Records relative to the deposit, maintenance and withdrawal of the funds shall contain information as may be prescribed by the rules of the commission. Nothing in this paragraph prohibits a qualifying broker from depositing nontrust funds in an amount not to exceed the required minimum balance in each trust account so as to meet the minimum balance requirements of the bank necessary to maintain the account and avoid charges. The minimum balance deposit shall not be considered commingling and shall not be subject to levy, attachment or garnishment. This paragraph does not prohibit a qualifying broker from depositing any deposit money or other money received by the qualifying broker in a real estate transaction with another cooperating broker who shall in turn comply with this paragraph;

(9) failed, if an associate broker, to place as soon after receipt as is practicably possible in the custody of the associate broker's qualifying broker, after securing signatures of all parties to the transaction, any deposit money or other money entrusted to the associate broker by any person dealing with the associate broker as the representative of the qualifying broker;

(10) violated a provision of Chapter 61, Article 29 NMSA 1978 or a rule promulgated by the commission;

(11) committed an act, whether of the same or different character from that specified in this subsection, that is related to dealings as a qualifying broker or an associate broker and that constitutes or demonstrates bad faith, incompetency, untrustworthiness, impropriety, fraud, dishonesty, negligence or any unlawful act; or

(12) been the subject of disciplinary action as a licensee while licensed to practice real estate in another jurisdiction, territory or possession of the United States or another country.

B. An unlawful act or violation of Chapter 61, Article 29 NMSA 1978 by an associate broker, employee, partner or associate of a qualifying broker shall not be cause for the revocation of a license of the qualifying broker unless it appears to the satisfaction of the commission that the qualifying broker had guilty knowledge of the unlawful act or violation.

History: 1953 Comp., § 67-24-29, enacted by Laws 1959, ch. 226, § 11; 1965, ch. 304, § 7; 1981, ch. 22, § 3; 1983, ch. 261, § 5; 1984, ch. 56, § 1; 1987, ch. 90, § 5; 1991, ch. 13, § 1; 2001, ch. 163, § 8; 2005, ch. 35, § 14; 2011, ch. 85, § 6; 2022, ch. 39, § 97.

ANNOTATIONS

The 2022 amendment, effective May 18, 2022, clarified that the New Mexico real estate commission is required to follow the provisions of the Uniform Licensing Act for disciplinary matters; and in Subsection A, added "In accordance with the Uniform Licensing Act".

The 2011 amendment, effective July 1 2011, permitted the payment of a commission to a qualified broker or another state if, pursuant to Section 61-29-16.1 NMSA 1978, the nonresident broker has entered in to a transaction-specific contract with a resident broker and has consented to being sued in New Mexico.

The 2005 amendment, effective January 1, 2006, permits the real estate commission to issue license with limitations or conditions if the applicant or licensee has obtained a license by false or fraudulent representations or performed or attempted to perform the prescribed acts specified in this section and provides that an unlawful act or violation of Chapter 61, Article 29 NMSA 1978 by an associate broker is not cause for revocation of a qualifying broker's license unless the qualifying broker had guilty knowledge of the act.

The 2001 amendment, effective July 1, 2001, inserted the Subsection A and B designations and redesignated former Subsections A to K as Paragraphs A(1) to A(11); deleted "real estate" preceding "broker" throughout the section; in Subsection A, substituted "refuse to issue or may suspend" for "refuse a license for cause or suspend", and "an applicant or licensee has:" for "is deemed to be guilty of:" in the introductory language; substituted "with whom he is associated" for "with whom he is licensed" in Paragraph (4), inserted "after securing signatures of all parties to the transaction" in Paragraphs (8) and (9); deleted "in the interests of the public and in conformance with the provisions of Chapter 61, Article 29 NMSA 1978" from the end of Paragraph (10); substituted "committed an act" for "any other conduct" in Paragraph (11); and added Paragraph (12).

The 1991 amendment, effective June 14, 1991, substituted "in Chapter 61, Article 29 NMSA 1978" for "herein" in the introductory paragraph; substituted the language beginning with "unlicensed person" for "person other than his principal" at the end of Subsection C; and made minor stylistic changes in Subsections E and K.

Revocation for "substantial misrepresentations". — The commission may suspend a license on the grounds that the licensee misrepresented to prospective buyers both the size of the property in question and the age of the roof. *Wolfley v. Real Estate Comm'n*, 1983-NMSC-064, 100 N.M. 187, 668 P.2d 303.

If the subjects of misrepresentations on application forms are material, i.e., "substantial misrepresentations", the real estate commission can, absent intervening equities, revoke the license even though there is no actual or intentional fraud. *Padilla v. Real Estate Comm'n*, 1987-NMSC-056, 106 N.M. 96, 739 P.2d 965.

The test of whether a misrepresentation is substantial is if it operates as an inducement to the real estate commission to do that which it should not otherwise have done. *Padilla v. Real Estate Comm'n*, 1987-NMSC-056, 106 N.M. 96, 739 P.2d 965.

Where a license to sell real estate was revoked for false or fraudulent representations in applications with respect to unpaid liens or judgments, but the real estate commission's findings and conclusions did not resolve in any meaningful way whether licensee intended to deceive and to induce the commission to act in reliance upon a misrepresentation of fact known by him to be untrue, and there were no specific findings and conclusions by the commission to afford the supreme court a clear understanding that the decision was based upon false representations relevant and material to facts bearing upon the good repute and competence of the licensee in the public interest, the cause was remanded to the commission with express directions to enter proper findings of fact and conclusions of law, together with a final order. *Padilla v. Real Estate Comm'n*, 1987-NMSC-056, 106 N.M. 96, 739 P.2d 965.

Substantial evidence to support commission's suspension of broker's license based on Paragraph A(5). *Elliott v. N.M. Real Estate Comm'n*, 1985-NMSC-078, 103 N.M. 273, 705 P.2d 679.

Broker to have knowledge of building code and zoning ordinances. — It is incumbent upon the broker to have a general knowledge of the building code and the zoning ordinances which deal with the particular property being offered for sale or which is being purchased. *Amato v. Rathbun Realty, Inc.*, 1982-NMCA-095, 98 N.M. 231, 647 P.2d 433.

Nonresident broker may share in commission. — This section modifies Sections 61-29-1 and 61-29-16 NMSA 1978 to the extent that a nonresident broker may, in a limited situation, share in a commission. He may only do so, however, through cooperation with a New Mexico licensed broker. *Hayes v. Reeves*, 1977-NMSC-092, 91 N.M. 174, 571 P.2d 1177.

Generally, as to establishing custodial, trust or escrow accounts. — No regulation of the real estate commission requires a custodial, trust or escrow account prior to the receipt of funds appropriate for deposit in such account. *McCaughtry v. N.M. Real Estate Comm'n*, 1970-NMSC-143, 82 N.M. 116, 477 P.2d 292.

Jurisdiction where landowner claims acting as broker. — Under Section 61-29-2 NMSA 1978 if a landowner represents to either the buyer or seller that he is acting as a broker, the real estate commission has jurisdiction over the transaction. *Poorbaugh v. N.M. Real Estate Comm'n*, 1978-NMSC-033, 91 N.M. 622, 578 P.2d 323.

Hiring of note broker for sale of real estate contract. — Because the seller of a real estate contract, who hired a note broker to handle the sale, was not acting as a real estate broker during the sale, the commission lacked jurisdiction to revoke the seller's license for misrepresentation. *Vihstadt v. Real Estate Comm'n*, 1988-NMSC-003, 106 N.M. 641, 748 P.2d 14.

Applicability of Paragraph A(3) prohibition. — The prohibition of Subsection C (now Paragraph A(3)) is applicable to a broker or salesman representing the seller of real estate giving the purchaser trading stamps, free down payments on the property, moving costs, etc., when it can be shown that the real estate broker or salesman gave one or more of the items listed to the purchaser of the property as an integral part of a transaction involving the purchase and sale of the property. 1963 Op. Att'y Gen. No. 63-28 (rendered prior to 1991 amendment).

Payment of commission to buyer who is not principal prohibited. — Subsection C (now Paragraph A(3)) precludes a licensed salesman or broker from paying any portion of his commission to a buyer who is not his principal, regardless of disclosure to the principal of the arrangement. 1981 Op. Att'y Gen. No. 81-25 (rendered prior to 1991 amendment).

In order to properly make sense of the reference in Subsection C (now Paragraph A(3)) to "paying," and to give effect to the legislative intent indicated by that reference, the words "to or" may be read into that subsection preceding "from any person." 1981 Op. Att'y Gen. No. 81-25 (rendered prior to 1991 amendment).

Criminal Offender Employment Act to be followed in suspension or revocation action. — The provisions of the Criminal Offender Employment Act must be followed by the real estate commission in any action by the commission to suspend or revoke a broker's or salesperson's license because of a conviction of a felony or misdemeanor involving moral turpitude. 1982 Op. Att'y Gen. No. 82-02.

Law reviews. — For article, " 'To Purify the Bar': A Constitutional Approach to Non-Professional Misconduct," see 5 Nat. Res. J. 299 (1965).

For 1984-88 survey of New Mexico administrative law, 19 N.M.L. Rev. 575 (1990).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 12 Am. Jur. 2d Brokers §§ 10, 21 to 29.

Bias of members of license revocation board, 97 A.L.R.2d 1210.

Suspension or revocation of real estate broker's license on ground of discrimination, 42 A.L.R.3d 1099.

Revocation or suspension of real estate broker's license for violation of statutes or regulations prohibiting use of unlicensed personnel in carrying out duties, 68 A.L.R.3d 530.

Real estate broker's liability for misrepresentations as to income from, or earnings of, property, 81 A.L.R.3d 717.

Validity and application of regulation prohibiting licensed real-estate broker from negotiating sale or lease with owner known to have exclusive listing agreement with another broker, 17 A.L.R.4th 763.

Real-estate broker's rights and liabilities as affected by failure to disclose agreement to loan purchase money to purchaser, 17 A.L.R.4th 788.

Revocation or suspension of real estate broker's license for conduct not connected with business as broker, 22 A.L.R.4th 136.

Real estate broker's or agent's misrepresentation to, or failure to inform, vendor regarding value of vendor's real property, 33 A.L.R.4th 944.

Grounds for revocation or suspension of license of real-estate broker or salesperson, 7 A.L.R.5th 474.

12 C.J.S. Brokers §§ 16, 19, 21 to 24.

61-29-13. Provision for hearing before suspension or revocation of license.

The commission shall, before suspending or revoking any license, set the matter down for a hearing pursuant to the provisions of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978].

History: 1953 Comp., § 67-24-30, enacted by Laws 1959, ch. 226, § 12; 1979, ch. 94, § 4.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 60, 61.

53 C.J.S. Licenses § 50 et seq.

61-29-14. Repealed.

ANNOTATIONS

Repeals. — Laws 2003, ch. 22, § 7 repealed 61-29-14 NMSA 1978, as enacted by Laws 1959, ch. 226, § 13, relating to nonresident brokers, effective June 20, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com.*

61-29-15. Maintenance of list of licensees.

The commission shall maintain a list of the names and addresses of all licensees licensed by it under the provisions of Chapter 61, Article 29 NMSA 1978, and of all persons whose license has been suspended or revoked within that year, together with such other information relative to the enforcement of the provisions of Chapter 61, Article 29 NMSA 1978 as it may deem of interest to the public. The commission shall also maintain a statement of all funds received and a statement of all disbursements, and copies of the statements shall be mailed by the commission to any person in this state upon request.

History: 1953 Comp., § 67-24-32, enacted by Laws 1959, ch. 226, § 14; 2001, ch. 163, § 10.

ANNOTATIONS

The 2001 amendment, effective July 1, 2001, substituted "Maintenance" for "Publication" in the section heading; substituted "The commission shall maintain a list" for "The commission shall, at least annually, publish"; and substituted "maintain" for "prepare" in the last sentence.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 12 C.J.S. Brokers § 14.

61-29-16. Suit by qualifying or associate broker.

No action for the collection of a commission or compensation earned by any person as a qualifying broker or an associate broker required to be licensed under the provisions of Chapter 61, Article 29 NMSA 1978 shall be maintained in the courts of the state unless such person was a duly licensed qualifying broker or associate broker at the time the alleged cause of action arose. In any event, suit against a member of the public as distinguished from any person licensed under Chapter 61, Article 29 NMSA 1978 shall be maintained only in the name of the qualifying broker.

History: 1953 Comp., § 67-24-33, enacted by Laws 1959, ch. 226, § 15. 2005, ch. 35, § 16.

ANNOTATIONS

The 2005 amendment, effective January 1, 2006, provides that no action to collect a commission or compensation by a person as a qualifying broker or an associate broker shall be maintained unless the person was licensed as a qualifying broker or an associate broker on the date cause of action arose and requires that suits against a member of the public be in the name of the qualifying broker.

Section upholds legislative intent that brokers be licensed. — A person who simply brings two parties together in a real estate transaction must be licensed to sue for the recovery of a commission. To rule otherwise would be to violate the clear intent of the legislature in requiring that real estate "brokers" or salespersons be licensed. *Watts v. Andrews*, 1982-NMSC-080, 98 N.M. 404, 649 P.2d 472.

Texas broker barred from collecting a commission. — Where plaintiff, who was a licensed real estate broker in Texas, knew that an unlisted ranch was for sale; plaintiff and defendants, who were licensed real estate brokers in New Mexico, orally agreed to work together as co-brokers in the sale of the ranch and to share the commission on the purchase price; plaintiff and defendants never entered into a transaction-specific written agreement to share the commission; and plaintiff brought the sellers and the buyers together with the assistance of defendants, plaintiff was barred from collecting a real estate commission, because plaintiff was acting as a broker without a valid New Mexico broker's license or a written, foreign broker's agreement in violation of Section 61-29-16 NMSA 1978. *PC Carter Co. v. Miller*, 2011-NMCA-052, 149 N.M. 660, 253 P.3d 950.

Meaning of "arose". — The word "arose" used in this statute is used in its usual and ordinary meaning and denotes past completed action, not past continuing action. *Lakeview Invs., Inc. v. Alamogordo Lake Vill., Inc.*, 1974-NMSC-027, 86 N.M. 151, 520 P.2d 1096.

Person claiming commission must prove license. — The statute casts no burden upon a defendant to prove absence of a license but does place upon one claiming a real estate commission the burden of establishing that he was duly licensed when the alleged cause of action arose and the inadvertent statement relative to the burden of proof in *Southwest Motel Brokers, Inc. v. Alamo Hotels, Inc.*, 1963-NMSC-091, 72 N.M. 227, 382 P.2d 707, *overruled by Star Realty Co. v. Sellers*, 1963-NMSC-140, 73 N.M. 207, 387 P.2d 319.

Finding that plaintiff held license required. — A judgment for recovery of a real estate commission without a finding that the plaintiff held either a broker's or salesman's license when the cause of action arose is erroneous. *Watts v. Andrews*, 1982-NMSC-080, 98 N.M. 404, 649 P.2d 472.

Section did not apply where plaintiff was not acting as a real estate broker. — A judgment for recovery of a real estate commission without a finding that the plaintiff held either a broker's or salesman's license when the cause of action arose is erroneous, but if the real estate commission is not derived from the sale of real property, or if the person was not acting as a real estate broker, then this provision does not apply, and therefore where plaintiff, a business consulting company, brought an action against the owner of property for breach of contract, fraudulent inducement and unjust enrichment based on services plaintiff rendered in the sale of property and in the sale of water from the property, summary judgment for the property owner was not warranted, because plaintiff had no role in the negotiations, did not introduce the buyers to the sellers, and had no first-hand knowledge of the deal's details. Plaintiff was therefore not acting as a real estate broker during the sale of the property or during the water sale negotiations. *Tyler Group Partners, LLC v. Madera*, 543 F. Supp. 3d 1184 (D. N.M. 2021).

Section prohibits action in quantum meruit to recover value of services rendered by person who is required to have license, in the absence of such license. *Bank of N.M. v. Freedom Homes, Inc.*, 1980-NMCA-064, 94 N.M. 532, 612 P.2d 1343.

An unlicensed real estate broker or salesperson cannot recover a commission in an action in quantum meruit. *Watts v. Andrews*, 1982-NMSC-080, 98 N.M. 404, 649 P.2d 472.

Suit by corporation. — Since an action to recover a real estate commission may only be brought in the name of the licensed broker, evidence showing corporation may be entitled to a license, and that an officer thereof had a license, was insufficient to enable corporation to bring suit in its own name. *Star Realty Co. v. Sellers*, 1963-NMSC-140, 73 N.M. 207, 387 P.2d 319.

Action for breach of contract. — This section did not prevent real estate broker from maintaining action for breach of contract where broker was not licensed at time he entered into exclusive sales representation agreement with defendant but became licensed prior to breach of this agreement by defendant. *Lakeview Invs., Inc. v. Alamogordo Lake Vill., Inc.*, 1974-NMSC-027, 86 N.M. 151, 520 P.2d 1096.

In estimating the commission on an exchange of real estate the actual and not the trade value of the property received in exchange should be taken as the basis, unless the contract of employment provides for some other basis, such as a fixed and agreed valuation of the property given in exchange. *Maine v. Garvin*, 1966-NMSC-140, 76 N.M. 546, 417 P.2d 40.

Allegation of licensing effective against motion to dismiss. — Allegation that the party seeking relief was licensed at the time the work or service was performed satisfies the requirements of this section as against a motion to dismiss. *Lakeview Invs., Inc. v. Alamogordo Lake Vill., Inc.*, 1974-NMSC-027, 86 N.M. 151, 520 P.2d 1096.

In order to satisfy the requirements of this section as against a motion to dismiss, the party seeking relief must allege that he was licensed at the time the work or service was performed. *Bosque Farms Home Ctr., Inc. v. Tabet Lumber Co.*, 1988-NMSC-027, 107 N.M. 115, 753 P.2d 894.

Parol evidence rule is fully applicable together with all the exceptions recognized in connection with any other writing in connection with written listing agreements. Parol evidence may not be received when its purpose and effect is to contradict, vary, modify or add to a written agreement, but is generally admissible to supply terms not in the written contract, to explain ambiguities in the written agreement, or to show fraud, misrepresentations or mistake. *Maine v. Garvin*, 1966-NMSC-140, 76 N.M. 546, 417 P.2d 40.

Compensation rule distinguished from that in fraud. — The rule applicable in determining the right of an agent to recover compensation from his principal differs from that which is applied when fraud is claimed as between a vendor and purchaser. *Maine v. Garvin*, 1966-NMSC-140, 76 N.M. 546, 417 P.2d 40.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 12 Am. Jur. 2d Brokers §§ 217 to 222.

Failure, when refusing offer to purchase land, to state, as ground therefor, broker's failure to introduce or disclose name of customer, as affecting right to assert such ground in defense of broker's action for compensation, 156 A.L.R. 605.

Rights and obligations of real estate broker employed to sell property as affected by option to purchase for himself, 164 A.L.R. 1378.

Real estate broker's right to commission on sale, exchange or lease of property listed without statement of price or other terms, 169 A.L.R. 380.

Want of license as affecting broker's recovery of compensation for services, 169 A.L.R. 767.

Condemnation of property as affecting broker's right to compensation, 170 A.L.R. 1422.

Subagent, right of broker as against employer to commission on sale by, 3 A.L.R.2d 532.

Relative rights and liabilities of vendor and his broker to down payment or earnest money forfeited by vendee for default under real estate contract, 9 A.L.R.2d 495.

Real estate broker's right to commission where purchaser refuses to go through with the executory contract because of reckless misrepresentation made to him by broker respecting property, 9 A.L.R.2d 504.

Right of real estate broker to commission where customer repudiates or fails to complete contract or promise which is oral or not specifically enforceable, 12 A.L.R.2d 1410.

Effect of statement of real estate broker to prospective purchaser that property may be bought for less than list price as breach of duty to vendor, so as to bar claim for commission, 17 A.L.R.2d 904.

What deviation in prospective vendee's proposal from vendor's terms precludes broker from recovering commission for producing a ready, willing, and able vendee, 18 A.L.R.2d 376.

Broker's right to commission on sales consummated after termination of employment, 27 A.L.R.2d 1348.

Nondisclosure or misrepresentation of sale price of other property as affecting broker's rights as against principal, 32 A.L.R.2d 728.

Liability of broker to prospective purchaser for refund of deposit or earnest money where contract fails because of defects in vendor's title, 38 A.L.R.2d 1382.

Broker's right to commission where owner sells property to broker's customer at less than stipulated price, 46 A.L.R.2d 848.

Conveyance of real property to mortgagee or lien holder as constituting "sale or exchange" rendering owner liable for commissions to broker having exclusive agency or exclusive right to sell, 46 A.L.R.2d 1116.

Broker's right to commission for selling part of property, 47 A.L.R.2d 680.

Liability of vendor's real-estate broker or agent to purchaser or prospect for misrepresenting or concealing offer or acceptance, 55 A.L.R.2d 342.

Broker's return of deposit to purchaser as waiver of right to demand commission from seller, 69 A.L.R.2d 1244.

Commission on sale rejected by principal because of buyer's fraud or misrepresentation, 79 A.L.R.2d 1055.

Licensed real estate broker's right to compensation as affected by lack of license on the part of partners, co-adventurers, employees, or other associates, 8 A.L.R.3d 523.

Real estate broker's right to compensation as affected by failure or refusal of principal's spouse to join in contract of sale, 10 A.L.R.3d 665.

Broker's right to commission from principal upon procuring third party taking an option, 32 A.L.R.3d 321.

Right of real estate broker to commission where listing contract is for sale of property and it is subsequently leased to one with whom broker had negotiated, 42 A.L.R.3d 1430.

Construction of provision in real estate broker's listing contract that broker shall receive commission on sale after expiration of listing period to one with whom broker has "negotiated" during listing period, 51 A.L.R.3d 1149.

Real estate broker's right to commission for procuring lessee where lease terminates before contemplated term, 54 A.L.R.3d 1171.

Necessity of having real estate broker's license in order to recover commission as affected by fact that business sold includes real property, 82 A.L.R.3d 1139.

Right of real estate broker to recover commission from seller-principal where buyer defaults under valid contract of sale, 12 A.L.R.4th 1083.

Real estate broker's right to recover commission from seller where sale fails because of seller's failure to deliver good title - modern cases, 28 A.L.R.4th 1007.

Real estate broker's rights and liabilities as affected by failure to disclose financial information concerning purchaser, 34 A.L.R.4th 191.

What constitutes financial ability to perform within rule entitling broker to commission for producing ready, willing, and able purchaser of real property, 87 A.L.R.4th 11.

12 C.J.S. Brokers §§ 132 to 135.

61-29-16.1. Foreign brokers; consent to service; referral fees.

A. A foreign broker may act in the capacity of a qualifying or associate broker with respect to commercial real estate located in New Mexico; provided that prior to performing any of the real estate activities of a qualifying or associate broker, the foreign broker enters into a transaction-specific written agreement with a New Mexico qualifying broker that includes, at a minimum:

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

(2) the terms of compensation between the foreign broker and the New Mexico qualifying broker;

(3) the effective date and definitive termination date of the agreement; and

(4) a statement that the foreign broker agrees to:

(a) cooperate fully with the New Mexico qualifying broker and all associate brokers designated by the New Mexico qualifying broker;

(b) except for the foreign broker's interaction with the foreign broker's client, conduct all contact with parties, including the general public and other brokers, in association with the New Mexico qualifying broker or associate broker designated by the New Mexico qualifying broker;

(c) conduct all marketing and solicitations for business in the name of the New Mexico qualifying broker;

(d) timely furnish to the New Mexico qualifying broker copies of all documents related to the transaction that are required by the laws of New Mexico to be retained by its licensees, including without limitation, agency disclosure, offers, counteroffers, purchase and sale contracts, leases and closing statements;

(e) comply with and be bound by and subject to New Mexico law and the regulations of the commission; and

(f) submit to the jurisdiction of the courts of New Mexico with respect to the transaction and any and all claims related thereto by service of process upon the secretary of state of New Mexico and upon the appropriate official of the state, province or nation of the foreign broker's real estate licensure.

B. When a New Mexico associate broker or qualifying broker makes a referral to or receives a referral from a foreign broker for the purpose of receiving a fee, commission or any other consideration, the qualifying broker of the New Mexico brokerage and the foreign broker shall execute a written, transaction-specific referral agreement at the time of the referral.

History: Laws 2005, ch. 35, § 15; 2011, ch. 85, § 7; 2013, ch. 167, § 7; 2014, ch. 27, § 2.

ANNOTATIONS

The 2014 amendment, effective May 21, 2014, provided for foreign brokers acting as qualifying or associate brokers with respect to commercial real estate; in the catchline, deleted "nonresident" and added "foreign"; in Subsection A, deleted the entire former language of the subsection which provided for service of process on associate brokers and qualifying brokers who had license application addresses outside New Mexico; added a new Subsection A; in Subsection B, after "a referral from a", deleted "nonresident" and added "foreign", and after "brokerage and the", deleted "nonresident" and added "foreign".

The 2013 amendment, effective June 14, 2013, required transaction-specific referral agreements at the time of referral; in the title, deleted "Foreign brokers; nonresident licensees", and added "Nonresident brokers; consent to service; referral fees"; deleted former Subsection A, which required nonresident brokers to enter into transaction-specific contracts with New Mexico brokers prior to commencing real estate activity; and added Subsection B.

61-29-16.2. Nonresident licensees; consent to service.

A. A nonresident licensee shall file with the commission an irrevocable consent that lawsuits and actions may be commenced against the associate broker or qualifying broker in the proper court of any county of New Mexico in which a cause of action may arise or in which the plaintiff may reside, by service on the commission of any process or pleadings authorized by the laws of New Mexico, the consent stipulating and agreeing that such service of process or pleadings on the commission is as valid and binding as if personal service had been made upon the associate broker or qualifying broker in New Mexico.

B. Service of process or pleadings shall be served in duplicate upon the commission; one shall be filed in the office of the commission and the other immediately forwarded by certified mail to the main office of the associate broker or qualifying broker against whom the process or pleadings are directed.

History: Laws 2014, ch. 27, § 4.

ANNOTATIONS

Effective dates. — Laws 2014, ch. 27 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 21, 2014, 90 days after the adjournment of the legislature.

61-29-17. Penalty; injunctive relief.

A. Any person who engages in the business or acts in the capacity of an associate broker or a qualifying broker within New Mexico without a license issued by the commission or pursuant to Section 61-29-16.1 NMSA 1978 is guilty of a fourth degree felony. Any person who violates any other provision of Chapter 61, Article 29 NMSA 1978 is guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars ($500) or imprisonment for not more than six months, or both.

B. In the event any person has engaged or proposes to engage in any act or practice violative of a provision of Chapter 61, Article 29 NMSA 1978, the attorney general or the district attorney of the judicial district in which the person resides or the judicial district in which the violation has occurred or will occur may, upon application of the commission, maintain an action in the name of the state to prosecute the violation or to enjoin the proposed act or practice.

C. In any action brought under Subsection B of this section, if the court finds that a person is engaged or has willfully engaged in any act or practice violative of a provision of Sections 61-29-1 through 61-29-18 NMSA 1978, the attorney general or the district attorney of the judicial district in which the person resides or the judicial district in which the violation has occurred or is occurring may, upon petition to the court, recover on behalf of the state a civil penalty not exceeding five thousand dollars ($5,000) per violation and attorney fees and costs.

History: 1953 Comp., § 67-24-34, enacted by Laws 1965, ch. 304, § 8; 1993, ch. 192, § 2; 2011, ch. 85, § 8; 2013, ch. 167, § 8; 2014, ch. 27, § 3.

ANNOTATIONS

Repeals and reenactments. — Laws 1965, ch. 304, § 8, repeals 67-24-34, 1953 Comp., relating to penalties for violations by brokers, and enacts the above section.

The 2014 amendment, effective May 21, 2014, provided that foreign brokers conducting business in New Mexico are not in violation of Article 61, Chapter 29 NMSA 1978 if they have entered into transaction-specific agreements; and in Subsection A, in the first sentence, after "license issued by the commission", added "or pursuant to Section 61-29-16.1 NMSA 1978".

The 2013 amendment, effective June 14, 2013, revised the penalties for violations of the licensure requirements; in Subsection A, in the first sentence, after "Any person who", deleted "violates any provision of Chapter 61, Article 29 NMSA 1978 is guilty of a fourth degree felony and shall be punished by a fine of not more than five thousand dollars ($5,000) or by imprisonment for a definite term of eighteen months, or both" and added the remainder of the sentence and added the second sentence; in Subsection B, after "occurred or will occur", deleted "shall" and added "may"; and in Subsection B, after "occurred or is occurring", deleted "shall" and added "may".

The 2011 amendment, effective July 1 2011, changed a violation from a misdemeanor offense to a fourth degree felony and changed the fine from five hundred dollars to five thousand dollars and the term of imprisonment from a term of not more than six months to a definite term of eighteen months.

The 1993 amendment, effective June 18, 1993, substituted "Chapter 61, Article 29 NMSA 1978" for "Sections 67-24-19 through 67-24-35 New Mexico Statutes Annotated, 1953 Compilation" in two places in Subsection A and in Subsection B; and added Subsection C.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 72, 73.

Right to private action under state statutes or regulations governing real estate brokers or salesmen, 28 A.L.R.4th 199.

53 C.J.S. Licenses § 82.

61-29-17.1. Recompiled.

ANNOTATIONS

Recompilations. — Former 61-29-17.1 NMSA 1978, relating to disciplinary action by the New Mexico real estate commission concerning time share projects, enacted by Laws 1986, ch. 97, § 14, has been recompiled as 47-11-11.2 NMSA 1978.

61-29-17.2. Unlicensed activity; civil penalty; administrative costs.

The commission may impose a civil penalty on any person who is found, through a court or administrative proceeding, to have acted in violation of Chapter 61, Article 29 NMSA 1978 in an amount not to exceed one thousand dollars ($1,000) for each violation or, if the commission can so determine, in the amount of the total commissions received by the person for the unlicensed activity. The commission may assess administrative costs for any investigation and administrative or other proceedings against any such person. Any money collected by the commission under the provisions of this section shall be deposited into the real estate recovery fund.

History: Laws 2001, ch. 163, § 11; 2011, ch. 85, § 9.

ANNOTATIONS

The 2011 amendment, effective July 1 2011, permitted the commission to impose a civil penalty in the amount of the total commissions received for an unlicensed activity and required civil penalties to be deposited into the real estate recovery fund.

61-29-18. Interpretation of act.

Nothing contained in Chapter 61, Article 29 NMSA 1978 shall affect the power of cities and villages to tax, license and regulate qualifying brokers or associate brokers. The requirements hereof shall be in addition to the requirements of an existing or future ordinance of any city or village so taxing, licensing or regulating qualifying brokers or associate brokers.

History: 1953 Comp., § 67-24-35, enacted by Laws 1959, ch. 226, § 18; 2005, ch. 35, § 17.

ANNOTATIONS

The 2005 amendment, effective January 1, 2006, provides that nothing in Chapter 61, Article 29 NMSA 1978 shall affect the power of municipalities to license and regulate qualifying brokers and associate brokers.

Severability. — Laws 1959, ch. 226, § 19, provides for the severability of the act if any part or application thereof is held invalid.

Meaning of "this act". — See same catchline in notes to 61-29-7 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 12 Am. Jur. 2d Brokers §§ 6 to 8.

53 C.J.S. Licenses §§ 10, 11.

61-29-19. Repealed.

History: 1953 Comp., § 67-24-36, enacted by Laws 1978, ch. 203, § 2; 1981, ch. 241, § 33; 1983, ch. 261, § 7; 1987, ch. 333, § 12; 1993, ch. 83, § 7; 1993, ch. 253, § 3; 2000, ch. 4, § 17; 2005, ch. 208, § 21; 2011, ch. 30, § 8; repealed by Laws 2011, ch. 85, § 11.

ANNOTATIONS

Repeals. — Laws 2011, ch. 85, § 11 repealed 61-29-19 NMSA 1978, as enacted by Laws 1978, ch. 203, § 2, relating to the termination of agency life, effective July 1, 2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com.*

Laws 2011, ch. 30, § 8, effective June 17, 2011, also amended 61-29-19 NMSA 1978 by changing the termination, operation and repeal dates. The section was set out as repealed by Laws 2011, ch. 85, § 11.

See 12-1-8 NMSA 1978.

61-29-19.1. Real estate education and training fund created; purpose; appropriation.

A. The "real estate education and training fund" is created in the state treasury. The fund shall consist of an initial transfer of the balance in the real estate recovery fund as provided in Subsection C of this section; legislative appropriations to the fund; fees charged by the commission for approval of real estate education sponsors, courses and instructors; gifts, grants, donations and bequests to the fund; and income from investment of the fund. Money in the fund shall not revert to any other fund at the end of a fiscal year.

B. The fund shall be administered by the commission, and money in the fund is subject to appropriation by the legislature to the commission to improve real estate education and to train real estate instructors. The commission shall promulgate rules specifying the manner in which the fund shall be administered.

C. Notwithstanding the provisions of Sections 61-29-21 and 61-29-22 NMSA 1978, on July 1, 2005, the balance in excess of two hundred fifty thousand dollars ($250,000) in the real estate recovery fund shall be transferred to the real estate education and training fund.

History: Laws 2005, ch. 35, § 20.

ANNOTATIONS

Effective dates. — Laws 2005, ch. 35, § 21 makes the act effective January 1, 2006.

61-29-20. Short title.

Sections 61-29-20 through 61-29-29 NMSA 1978 may be cited as the "Real Estate Recovery Fund Act".

History: Laws 1980, ch. 82, § 1; 2022, ch. 39, § 98.

ANNOTATIONS

The 2022 amendment, effective May 18, 2022, after "Section" changed "1 through 10 of this act" to "61-29-20 through 61-29-29 NMSA 1978".

Law reviews. — For article, "Survey of New Mexico Law, 1979-80: Property," see 11 N.M.L. Rev. 203 (1981).

For annual survey of New Mexico Law of Property, see 20 N.M.L. Rev. 373 (1990).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 12 C.J.S. Brokers §§ 11, 12.

61-29-21. Fund created.

There is created in the state treasury a fund which shall be known as the "real estate recovery fund" to be administered by the real estate commission in accordance with the provisions of the Real Estate Recovery Fund Act [61-29-20 to 61-29-29 NMSA 1978]. All money received by the real estate commission pursuant to the Real Estate Recovery Fund Act shall be credited to the real estate recovery fund. The state treasurer may invest money in the real estate recovery fund in United States bonds or treasury certificates under such rules and regulations as may be prescribed by the state board of finance, provided that no investments shall be made which will impair the necessary liquidity required to satisfy judgment payments awarded pursuant to the Real Estate Recovery Fund Act. All interest earned from such investments shall be credited to the fund to pay any future judgments only.

History: Laws 1980, ch. 82, § 2.

ANNOTATIONS

61-29-22. Additional fees.

A. The commission shall collect an annual fee not in excess of ten dollars ($10.00) from each real estate licensee prior to the issuance of the next license.

B. The commission shall collect from each successful applicant for an original real estate license, in addition to the original license fee, a fee not in excess of ten dollars ($10.00).

C. The additional fees provided by this section shall be credited to the real estate recovery fund. The amount of the real estate recovery fund shall be maintained at one hundred fifty thousand dollars ($150,000). If the real estate recovery fund falls below this amount, the commission shall have authority to adjust the annual amount of additional fees to be charged licensees or to draw on the real estate commission fund in order to maintain the fund level as required in this section. If on July 1 of any year, the balance in the fund exceeds four hundred thousand dollars ($400,000), the amount over four hundred thousand dollars ($400,000) shall be transferred to the real estate commission fund to be used for the purposes of carrying out the provisions of Chapter 61, Article 29 NMSA 1978.

History: Laws 1980, ch. 82, § 3; 1987, ch. 90, § 6; 1993, ch. 253, § 4; 2003, ch. 22, § 6; 2011, ch. 85, § 10.

ANNOTATIONS

The 2011 amendment, effective July 1 2011, lowered the minimum balance of the real estate recovery fund from two hundred fifty thousand dollars to one hundred fifty thousand dollars.

The 2003 amendment, effective June 20, 2003, deleted "On and after the effective date of the Real Estate Recovery Fund Act" from the beginning of Subsections A and B; and added the last sentence of Subsection C.

The 1993 amendment, effective June 18, 1993, purported to amend this section but made no change.

61-29-23. Judgment against qualifying or associate broker; petition; requirements; recovery limitations.

A. When an aggrieved person claims a pecuniary loss caused by a state-licensed qualifying broker or associate broker based upon fraud, knowing or willful misrepresentation or wrongful conversion of funds entrusted to the qualifying broker or associate broker, involving a transaction for which a qualifying broker's or an associate broker's license is required and which arose out of or during the course of a transaction involving the sale, lease, exchange or other disposition of real estate or property management, where the cause of action arose on or after July 1, 1980, that person may, within two years after obtaining a final judgment based upon fraud, knowing or willful misrepresentation or wrongful conversion of funds entrusted to the qualifying broker or associate broker from a court of competent jurisdiction, file a verified petition with the commission for recovery pursuant to the Real Estate Recovery Fund Act. The real estate recovery fund reimburses the claimant for unpaid actual damages included in the judgment, but not more than fifty thousand dollars ($50,000) per judgment regardless of the number of persons aggrieved or parcels of real estate involved in the transaction. The aggregate amount recoverable by all claimants for losses against any one licensee during one calendar year shall not exceed one hundred thousand dollars ($100,000).

B. A copy of the verified petition with the judgment attached shall be served upon the commission by United States postal service certified return receipt or in the manner provided by law for service of a civil summons.

C. The commission shall serve the petition and notice of hearing on the licensee in substantially the same manner as required pursuant to the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978].

D. The commission shall conduct a hearing on the petition after service of the petition upon the commission and the licensee. At the hearing, the petitioner shall be required to show that the petitioner:

(1) is not the spouse of the judgment debtor, the personal representative of the spouse or related to the third degree of consanguinity or affinity to the licensee whose conduct is alleged to have caused the loss;

(2) has complied with all the requirements of the Real Estate Recovery Fund Act; and

(3) has a judgment that is not covered by a bond, insurance, surety agreement or indemnity agreement.

E. At the hearing, the licensee shall be permitted to raise all affirmative defenses.

History: Laws 1980, ch. 82, § 4; 1987, ch. 90, § 7; 2005, ch. 35, § 18; 2021, ch. 106, § 2.

ANNOTATIONS

The 2021 amendment, effective July 1, 2021, clarified the procedures for recovery pursuant to the Real Estate Recovery Fund Act, and increased recovery limits; in Subsection A, after "disposition of real estate", added "or property management", after "qualifying broker or associate broker", deleted "and the termination of all proceedings, including appeals in connection with the judgment, file a verified petition with the commission for payment", after "from", added "a court of competent jurisdiction, file a verified petition with the commission for recovery pursuant to the Real Estate Recovery Fund Act", after "The real estate recovery fund", added "reimburses the claimant", after "for", added "unpaid", after "included in the judgment", deleted "and unpaid", after "but not more than", deleted "ten thousand dollars ($10,000)" and added "fifty thousand dollars ($50,000)", after "licensee", added "during one calendar year", and after "shall not exceed", changed "thirty thousand dollars ($30,000)" to "one hundred thousand dollars ($100,000)"; in Subsection B, after "A copy of the", added "verified", after "petition", added "with the judgment attached", and after "upon the commission", added "by the United States postal service certified return receipt or"; added new Subsection C and redesignated former Subsection C as Subsection D; in Subsection D, after "upon the commission", added "and the licensee", deleted former Paragraphs C(3) through C(5) and redesignated former Paragraph C(6) as Paragraph D(3), in Paragraph D(3), deleted subsection designation "(a)" and deleted former Subparagraphs C(6)(b) and C(6)(c); and added Subsection E.

The 2005 amendment, effective January 1, 2006, provides that a person who has obtained a judgment against a qualifying broker or an associate broker under this section may petition the real estate commission for payment from the real estate recover fund.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Real estate broker's rights and liabilities as affected by failure to disclose financial information concerning purchaser, 34 A.L.R.4th 191.

Real-estate broker's liability to purchaser for misrepresentation or nondisclosure of physical defects in property sold, 46 A.L.R.4th 546.

61-29-24. Commission; compromise.

Upon receipt of a petition as required by Section 61-29-23 NMSA 1978, the commission shall conduct a hearing in substantially the same manner and with the same authority as set forth in the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978]. The commission may compromise a claim based upon the application of a petitioner.

History: Laws 1980, ch. 82, § 5; 1987, ch. 90, § 8; 2021, ch. 106, § 3.

ANNOTATIONS

The 2021 amendment, effective July 1, 2021, revised procedures related to hearings on petitions for recovery pursuant to the Real Estate Recovery Fund Act; in the section heading, after "Commission", deleted "review"; after "the same manner", added "and with the same authority", and after "Uniform Licensing Act", deleted "including Sections 61-1-9 through 61-1-11 NMSA 1978. Review of the commission's decision shall be in the manner provided by Section 61-1-20 NMSA 1978".

61-29-25. Commission finding.

If the commission makes a specific finding of the items enumerated in Section 61-29-23 NMSA 1978 and determines that a claim should be levied against the real estate recovery fund, the commission shall enter an order requiring payment from the fund of that portion of the petitioner's claim that is payable from the fund pursuant to the provisions of and in accordance with the limitations contained in Section 61-29-23 NMSA 1978.

History: Laws 1980, ch. 82, § 6; 1987, ch. 90, § 9.

ANNOTATIONS

61-29-26. Insufficient funds.

If at any time the money deposited in the real estate recovery fund is insufficient to satisfy any authorized claim for payment from the fund, the real estate commission shall, when sufficient money has been deposited in the fund, satisfy such unpaid claims in the order that they were originally filed, together with accumulated interest at the rate of eight percent per year.

History: Laws 1980, ch. 82, § 7.

ANNOTATIONS

61-29-27. Subrogation.

When the commission makes any payment from the real estate recovery fund to a judgment creditor, the commission shall be subrogated to all rights of the judgment creditor for the amounts paid out of the fund and any amount and interest so recovered by the commission shall be deposited in the fund. The commission may, pursuant to the provisions of the Uniform Licensing Act [61-1-1 NMSA 1978], revoke, suspend or refuse to renew the license of any qualifying broker or associate broker for whom payment from the fund has been made in accordance with the provisions of the Real Estate Recovery Fund Act [61-29-20 to 61-29-29 NMSA 1978]. Further, the commission may refuse to issue or renew the license of any person for whom payment from the real estate recovery fund has been made, until that person reimburses the fund for all payments made on that person's behalf.

History: Laws 1980, ch. 82, § 8; 1987, ch. 90, § 10; 2005, ch. 35, § 19.

ANNOTATIONS

The 2005 amendment, effective January 1, 2006, provides that of the real estate commission pays a judgment against a qualifying broker or an associate broker from the real estate recovery fund, the real estate commission may revoke, suspend or refuse to renew the license of the qualifying or associate broker.

61-29-28. Waiver.

The failure of any person to comply with all of the provisions of the Real Estate Recovery Fund Act [61-29-20 to 61-29-29 NMSA 1978] shall constitute a waiver of any rights pursuant to that act.

History: Laws 1980, ch. 82, § 9.

ANNOTATIONS

61-29-29. Disciplinary action not limited.

Nothing contained in the Real Estate Recovery Fund Act [61-29-20 to 61-29-29 NMSA 1978] shall limit the authority of the real estate commission to take disciplinary action against a licensee for a violation of any of the provisions of Section 61-29-12 NMSA 1978 or of the rules and regulations of the real estate commission, nor shall the repayment in full of all obligations to the real estate recovery fund by any licensee nullify or modify the effect of any other disciplinary proceeding brought pursuant to the provisions of Section 61-29-12 NMSA 1978 or the rules and regulations promulgated by the commission.

History: Laws 1980, ch. 82, § 10.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Grounds for revocation or suspension of license of real estate broker or salesperson, 7 A.L.R.5th 474.