Chapter 61: Real Estate Brokers

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Part 1: General Provisions

16.61.1.7 Definitions

I. Broker duties: Certain duties owed by brokers to prospective buyers, sellers, owners and tenants, and broker obligations to other brokers as set forth in Part 16.61.19.8.

PART 3: REAL ESTATE BROKER’S LICENSE: EXAMINATION AND LICENSING APPLICATION REQUIREMENTS

16.61.3.9 Examination and licensing requirements

A. Associate broker’s license: prior to applying for an associate broker’s license, an applicant must pass the real estate broker’s examination prescribed by the commission.

B. Examination application.

(1) Applications to take the broker’s examination are made directly to the commission’s examination contractor on a form prescribed by the commission and provided by the contractor in a candidate information bulletin. Along with the application form, an applicant must submit certificates of completion of commission-approved 30 hour pre-licensing courses in real estate principles and practice, real estate law, and broker basics. These pre-licensing courses must have been completed within the three years prior to application to take the broker’s examination. Exam candidates who are licensed as associate brokers and are taking the broker’s examination to upgrade to qualifying broker are exempt from the three-year time limit and must only provide documentation of course completion.

(2) Exam candidates currently licensed as real estate salespersons or brokers in other states or jurisdictions will be exempt from completing the real estate principles and practice and real estate law courses in New Mexico and from taking the national portion of the broker’s examination if they can provide a certified license history from their resident licensing jurisdiction documenting that they have completed these courses or their equivalent. A New Mexico associate broker upgrading to qualifying broker will also be exempt from taking the national portion of the broker’s exam.

(3) Except in a case of a license applicant from a state or jurisdiction with which the New Mexico real estate commission has a written license recognition agreement, an exam applicant cannot be exempted from completing the commission-approved 30 hour broker basics course.
(4) License applicants currently licensed by state or jurisdiction with which the commission has a written license recognition agreement are not required to take any of the prescribed pre-licensing courses or take either portion of the broker’s examination to be eligible to apply for a New Mexico broker’s license.

(5) Exam applicants exempted from taking the real estate principles and practice and real estate law courses by virtue of having a current real estate broker’s license in another state shall attach to their examination application a letter of pre-licensing education waiver from the commission and a certificate of completion of the 30 hour broker basics course.

(6) All other applicants for the examination shall attach to their license examination application certificates documenting completion of one 30 hour pre-licensing course each in real estate principles and practice, real estate law, and broker basics.

(7) At the time of making application to take the examination, applicants shall pay to the commission’s examination contractor a non-refundable fee not to exceed $95.

(8) Applicants are required to pass both the state and national portions of the examination with a minimum score of 75 no later than 90 calendar days after the first time they took the examination. Applicants failing to pass both portions of the examination within this time frame will be required to re-take and pass both portions of the examination before being eligible to apply for a broker’s license.

C. Associate Broker License application.

(1) Upon passing both portions of the New Mexico real estate broker’s examination, an individual has six months to apply for an associate broker’s license on the application prescribed by the commission.

(2) An individual who fails to apply for an associate broker’s license within six months of having passed both portions of the broker’s examination shall be required to re-take both portions of the examinations six month deadline.

(3) An applicant for an associate broker’s license shall be a legal resident of the United States and have reached the age of majority in New Mexico or in the state in which the applicant resides.

(4) Along with the license application form prescribed by the commission, the applicant must submit a written score report provided by the examination contractor documenting that he/she has passed both portions of the examination with a minimum score of 75, documentation of having been fingerprinted for purposes of matching with state and national arrest record databases, a certificate of insurance documenting that the applicant has a current errors and omissions insurance policy that meets the requirements for such insurance as described in 16.61.5 NMAC of the commission rules, and a non-refundable license application fee not to exceed $270.

D. Qualifying broker’s license examination: There is no separate qualifying broker’s examination.

E. Military service members.

(1) The commission shall, as soon as practicable after a military service member, the spouse of a military service member or a recent veteran files an application for an associate broker’s or qualifying broker’s license, process the application and issue a license to a qualified applicant who submits satisfactory documentation that the applicant holds a real estate license issued by another licensing jurisdiction, including a branch of the armed forces of the United States, that is current and in good standing, and that has licensing requirements that are substantially equivalent to New Mexico requirements.

(2) A license issued pursuant to this part is not a provisional license and confers the same rights, privileges, and responsibilities as any other license issued by the commission.

(3) A license issued pursuant to this part shall not be renewed unless the licensee satisfies the commission’s requirements for license renewal.

[16.61.3.9 NMAC - Rp, 16.61.3.8 NMAC, 1-1-2012; A, 1-1-2017]
16.61.3.10 Qualifying Broker Licensing Requirements

A. To be eligible to apply for a New Mexico qualifying broker’s license, an applicant must furnish the commission satisfactory evidence of completing the following:

1. Passage of the broker’s examination.
2. At least four years active experience as a licensed associate broker during the 60-month period, immediately preceding the filing of the application.
3. In the case of a qualifying broker who will not be supervising or managing other brokers, at least two years of active experience as a licensed associate broker during the 60-month period immediately preceding the filing of the application.
4. Qualifying brokers who have qualified for qualifying broker status under the exception provided in paragraph (3), must document at least four years of active experience as an associate broker and qualifying broker before being eligible to supervise other brokers.
5. If licensed in another state, not less than four years’ experience as the equivalent of an associate broker during the 60-month period immediately preceding the filing of the application with verification in writing by the applicant’s qualifying broker(s) or the state’s applicable equivalent to a qualifying broker. A candidate for a qualifying broker license from another state will, in all circumstances, be required to fulfill all the remaining requirements, including experience, education and acknowledgement of responsibilities.
6. Documented qualifying transactional experience totaling 100 points, with at least one transaction accomplished during each of the four years prior to filing of the application. These transactions are to be verified in writing by the applicant’s qualifying broker. Transactions involving property owned by the applicant do not count toward the required total. Points are awarded as follows and can be accumulated through any combination of the following activities:

   a. Each sale or lease transaction is deemed to have two sides; one side working with the buyer/tenant and the other side working with the seller/owner. Both transaction sides receive points.
   b. In the event of transactions handled by teams comprised of more than one associate broker the qualifying broker shall monitor the transactions to determine which associate broker is deserving of earning the points allowed, or the division of the allowable points among team members.
   c. Real estate and property management transactions; total points available per transaction side:

   1. Residential sales transactions: Five Points
   2. Residential lot sale transactions: Three points
   3. Residential lease transactions: Four points
   4. Commercial improved property
      Sale transactions: Eight points
   5. Commercial unimproved lot
      Sale transactions: Six points
   6. Commercial lease transactions: Six points
   7. Property Management points are accumulated as follows: Points are awarded for each location for which the broker has direct responsibility. Direct responsibility means acting as an agent for the owner and is not just collecting rent. Property management points are accumulated as follows:
      a. Residential Property Management: Each property receives three points, plus one point for each additional unit in that property to a maximum of 25 points per property per year. A unit is defined as a separate residence with its own postal address.
      b. Commercial Property Management: Each property receives four points, plus one point for each individual tenant space in that property to a maximum of 25 points per property per year. A space is defined as a commercial location that has its own postal address.
   8. Farm and Ranch/Vacant Land - For the purposes of this paragraph a farm or a ranch is defined as a property which is used for commercial agricultural purposes. Farm and Ranch points are awarded as follows:
      a. Less than 100 acres, eight points.
      b. 100 acres or more, ten points.
9. Limited Waiver: A waiver may be granted by the Commission to an associate broker who can demonstrate that their particular circumstance, i.e. size of market, lack of property types, health issues, force majeure, make it very difficult to obtain 100 points. The Commission may waive up to 30 points and the transaction per year requirement. Written documentation and statements of proof shall be submitted with the application for waiver.

16.61.3.11 Qualifying Broker Candidate Education Requirements for Application

A. Completion of the commission approved 30-hour brokerage office administration course, with an in-course instructor-created exam administered by the instructor at the end of the course.

B. Completion of the eight-hour Understanding and Using RANM Forms course (#21020551), or at least eight hours of other Commission-approved contract course(s).

C. Completion of a minimum of eight hours of elective courses in the professional track of the applicant; defined as residential transactions, commercial transactions, property management transactions, ranch and/or vacant land transactions.

D. Attendance at one New Mexico real estate commission meeting, public hearing, or disciplinary hearing. In the event of broker hardship, approved by the Commission, the Real Estate Commission may authorize an equivalent to attendance at a commission meeting by an online download, attendance at any approved equivalent, or by other approved participation.

16.61.3.12 Qualifying Broker Application Requirements

A. A notarized affidavit of the applicant’s acknowledgement of the responsibilities of a qualifying broker, including the direct supervision of all brokers affiliated with the qualifying broker. Supervision shall be defined in the affidavit as follows:

   (1) Review and maintain all records and documents required for real estate related matters processed by personnel supervised by the Qualifying Broker.
   (2) Provide or promote appropriate training of all brokers and staff affiliated with the qualifying broker for compliance with the Real Estate License Law and Commission Rules.
   (3) Supervise advertising of real estate or real estate services conducted on behalf of others by anyone affiliated with the qualifying broker.
   (4) Execute and maintain current written employment agreements or independent contractor agreements with associate brokers affiliated with the qualifying broker.

B. A broker applying to be licensed as a qualifying broker supervised by another qualifying broker is not required to submit this affidavit.

C. A supervisory plan which will outline the qualifying broker’s schedule of training and education provided or promoted. The supervisory plan will be applicable to the broker applying to be a qualifying broker and to all other brokers affiliated with them, if any. A broker applying to be licensed as a qualifying broker supervised by another qualifying broker is not required to submit a supervisory plan.

D. Applicants with current licenses who can document that they were New Mexico qualifying brokers on or before December 31, 2005 are not subject to those requirements and may regain qualifying broker status by filling a trade name registration form and paying the trade name registration fee to the commission.

E. Brokers who were salespersons on January 1, 2006 when the license law was amended to eliminate the salesperson category and were converted to associate broker status, shall in addition to meeting the
requirements in the preceding section, document that they have met the requirements for and passed the broker’s examination prior to being issued a qualifying broker’s license.

F. An application for a New Mexico qualifying broker’s license shall be made on the form prescribed by the commission and shall be accompanied with documentation of having been fingerprinted for purposes of matching with state and national arrest record databases, a certificate documenting that the applicant has a current errors and omissions insurance policy that meets the requirements for such insurance as described in 16.61.5 NMAC of the commission rules, and a non-refundable license application fee not to exceed $270.

G. Military service members:

(1) The commission shall, as soon as practicable after a military service member, the spouse of a military service member or a recent veteran files an application for an associate broker’s or qualifying broker’s license, process the application and issue a license to a qualified applicant who submits satisfactory documentation that the applicant holds a real estate license issued by another licensing jurisdiction, including a branch of the armed forces of the United States, that is current and in good standing, and that has licensing requirements that are substantially equivalent to New Mexico requirements.
(2) A license issued pursuant to this part is not a provisional license and confers the same rights, privileges, and responsibilities as any other license issued by the commission.
(3) A license issued pursuant to this part shall not be renewed unless the licensee satisfies the commission’s requirements for license renewal.

16.61.3.13 Qualifying Broker License Renewal Requirements

A qualifying broker applying for renewal of their license shall furnish the Commission satisfactory evidence of successful completion of:

A. The qualifying broker refresher course.

B. A minimum of 36 hours of Commission-approved courses, including

(1) The four-hour Core Course in each year of the broker’s licensing cycle
(2) A minimum of eight hours of courses from the qualifying broker’s professional track, including Commission-approved courses in residential transactions; commercial transactions, including courses offered by CCIM, SIOR, and CBI; property management transactions, including courses offered by IREM; and vacant land and/or farm and ranch sales.

C. Attendance at one Commission meeting, rule hearing, or disciplinary hearing. In the event of broker hardship, approved by the Commission, the Real Estate Commission may authorize an equivalent to the attendance of a commission meeting either by an online download, attendance at any approved equivalent, or by other approved participation.

D. An application for renewal of a qualifying broker’s license shall include a notarized affidavit of the applicant’s acknowledgement of the responsibilities of a qualifying broker, including the direct supervision of all brokers affiliated with the brokerage, including but not limited to:

(1) Review and maintain all records and documents required for real estate related matters processed by the brokerage.
(2) Provide or promote appropriate training of all brokers and staff affiliated with the qualifying broker to ensure compliance with the Real Estate License Law and Commission Rules.
(3) Supervise advertising of real estate or real estate services conducted on behalf of others by anyone affiliated with the qualifying broker.
(4) Execute and maintain current written employment agreements or independent contractor agreements with associate brokers affiliated with the qualifying broker.
E. A qualifying broker applying for license renewal who will be supervised by another qualifying broker will not be required to submit this affidavit.

F. An application for renewal of a qualifying broker’s license shall include a statement affirming that the qualifying broker substantially fulfilled the supervisory plan filed with the initial application, and a plan outlining the schedule of training and education to be provided or promoted and the policies for supervision in the next licensing cycle. The supervisory plan will be applicable to the applicant for renewal of the qualifying broker’s license and all affiliated brokers, if any. A qualifying broker who is supervised by another qualifying broker is not required to submit a supervisory plan.

Part 15 Approval of Real Estate Courses, Sponsors, and Instructors

16.61.15.8 Education Advisory Committee

The commission shall appoint an education advisory committee (EAC), hereinafter referred to as the committee, with the goal of upgrading and improving the real estate education program in order to carry out the commission’s mission of protecting the public and increasing the professional competence of real estate brokers. The committee shall advise the commission on all matters related to broker education.

A. The committee shall meet monthly or as required for the purpose of evaluating applications for real estate course sponsors, courses, and instructors and shall make recommendations to the commission as to its findings.

(1) The committee shall use specific criteria to evaluate a course, an instructor or course sponsor for approval. These specific criteria shall consider both the instructor’s depth of knowledge of the subject and the instructor’s ability to convey that knowledge.

(2) The committee shall clearly state in writing to the applicant the reasons for which a course, an instructor or course sponsor are not approved.

(3) A sponsor or instructor applicant not recommended for approval by the committee may ask the commission to review the committee’s unfavorable recommendation.

B. The committee shall consist of up to nine voting members and not fewer than three non-voting instructor/advisory members. The committee chair and vice chair shall be elected by the committee from among the voting members. Upon the effective date of this rule, approximately half of the members shall be appointed to two-year terms and half to three-year terms. Thereafter, all members shall be appointed to three-year terms.

C. Members shall serve a maximum of two consecutive terms, but may reapply for membership one year after the expiration of their second term. The commission shall appoint members to fill vacancies until the end of the term of the vacant position.

[16.61.15.8 NMAC - Rp, 16.61.15.8 NMAC; A, 1-1-2017]

Part 16: Qualifying Broker: Affiliation and Responsibilities

16.61.16.9 Responsibilities

A qualifying broker shall, in addition to all other requirements imposed by law, comply with the following:

A. Conduct the real estate brokerage business under the trade name and from the brokerage address or addresses registered with the commission;

B. Prominently display in the brokerage office, the qualifying broker's own license and the licenses of all other affiliated associate brokers conducting real estate brokerage business from the brokerage office; in the
event of a virtual office, this requirement is met by displaying a legible photo or scanned image of the licenses on the brokerage’s web site through a link labeled “real estate licenses”.

C. Have in the brokerage office and available to all affiliated associate brokers and qualifying brokers a current copy of the state of the New Mexico real estate license law and rules manual;

D. Notify the commission in writing within ten days of a change of the brokerage office address or telephone number;

E. Supervise all real estate related activities performed by all personnel, licensed or unlicensed, on behalf of others; as follows:

   (1) Review and maintain all records and documents required for real estate related matters processed by all personnel supervised by the qualifying broker
   (2) Provide or promote appropriate training of all brokers and staff affiliated with the qualifying broker for compliance with the Real Estate License Law and Commission Rules.
   (3) Supervise advertising of real estate or real estate services conducted on behalf of others by anyone affiliated with the qualifying broker.
   (4) Execute and maintain current written employment agreements or independent contractor agreements with associate brokers affiliated with the qualifying broker.

F. All records and documents wherein the qualifying broker and affiliated associate brokers are engaged on behalf of others, or on their own behalf, in real estate related matters; the required records shall be available to the Commission or any duly authorized Commission representative at the place of business of the qualifying broker or at the Commission office. All such records whether in paper or electronic format shall be retained for a period of not less than six years. In the case of a property manager, all records shall be retained for the full term of any agreement and for six years from the termination of the management agreement.

G. Supervision of trust account management by brokerage owners whether or not the brokerage owners are licensed real estate brokers. Such trust account management will conform to other trust account requirements in the commission rules.

H. Deposit all money received on behalf of others in the proper trust account as soon after receipt as is practically possible after securing signatures of all parties to the transaction documents;

I. Receive and disburse all commissions, referral fees, and other considerations to any broker affiliated with the qualifying broker, or broker who had been affiliated with the qualifying broker at the time the transaction went under contract; the qualifying broker may also disburse or authorize the disbursement of such commissions and fees to any entity entitled by law to receive same, including the estate of a deceased broker, the deceased broker’s surviving spouse, or any legally recognized entity wholly owned by an associate broker and their spouse. Such partnership, corporation, or Limited Liability Company shall not be required to have a qualifying broker for purposes of this subpart;

J. Assure that when the brokerage cooperates with or makes a referral to, or receives a referral from any broker, that there be a transaction specific written co-brokerage or referral agreement signed by the qualifying broker;

K. Designate a broker in charge in the event actual supervision by the qualifying broker is not possible, and inform the commission of such designation in writing. During this period of time, the broker in charge shall assume all of the responsibilities of the qualifying broker for the brokerage;

L. Return the associate broker's license to the commission within 48 hours of termination or discharge;
M. Ensure that each qualifying broker and associate broker affiliated with the brokerage obtain and maintain a current errors and omissions insurance policy as provided in Section 61-29-4.2 NMSA 1978 of the Real Estate License Law and 16.61.5 NMAC of the commission rules;

N. Successfully complete as a condition of license renewal or as a condition of reinstatement of qualifying broker status the commission-approved qualifying broker refresher course;

O. Ensure that associate brokers affiliated with their brokerage complete the commission-approved new broker business practices course or the CCIM 101 course within their first year of licensure.

P. Ensure that the qualifying broker’s name and contact information, including license number, is clearly and conspicuously displayed on any written document generated by the brokerage or presented to a prospective customer or client, and that has the potential to become an express written agreement.

[16.61.16.9 NMAC - Rp, 16.61.16.9 NMAC, 1-1-2012; A, 1-1-2017]

Part 19: Broker Duties and Brokerage Relationships

16.61.19.8 Broker duties; disclosure

Brokers owe specific broker duties to prospective buyers, sellers, landlords (owners), tenants as set forth in this Part 16.61.19.8. Brokers shall disclose the applicable set of broker duties owed to buyers, sellers, landlords (owners) of rental property and tenants as set forth in this Part 16.61.19.8 prior to the time the broker generates or presents any written document to that party that has the potential to become an express written agreement and obtain from that applicable party written acknowledgement that the broker has made such disclosures. In the case of prospective buyers, sellers, landlord (owners) and tenants to whom the broker is not directly providing real estate services, such disclosure and acknowledgment of receipt shall be made through the broker who is directly providing real estate services to that buyer, seller, landlord (owner) or tenant.

A. Brokers owe the following duties to prospective buyers, sellers, landlords (owners) and tenants:

(1) Honesty and reasonable care and ethical and professional conduct;
(2) Compliance with local, state, and federal fair housing and anti-discrimination laws, the New Mexico real estate license law and the Real Estate Commission rules, the New Mexico Uniform Owner Resident Relations Act, and other applicable local, state, and federal laws and regulations;
(3) Performance of any and all written agreements made with the prospective buyer, seller, landlord (owner) or tenant;
(4) Written disclosure of any potential conflict of interest that the broker has in the transaction including but not limited to:
   
   (a) Any written brokerage relationship the broker has with any other parties to the transaction or;
   (b) Any material interest or relationship of a business, personal, or family nature that the broker has in the transaction;

(5) Written disclosure of any adverse material facts actually known by the associate broker or qualifying broker about the property or the transaction, or about the financial ability of the parties to the transaction to complete the transaction; adverse material facts requiring disclosure do not include any information covered by federal fair housing laws or the New Mexico Human Rights Act.

B. In addition to the broker duties owed to prospective buyers, sellers, landlords (owners) and tenants as set forth in this Section 16.61.19.8(A), Brokers owe the following Broker Duties to the buyers, sellers, landlord (owners) and tenants to whom the broker is directly providing real estate services, regardless of the scope and nature of those services; Brokers working as Property Managers for a landlord (owner) are directly providing real estate services to the landlord (owner), not to the tenant:
(1) Assistance to the party in completing the transaction, unless otherwise agreed to in writing by the party to whom the broker is directly providing real estate services, including:

(a) Timely presentation of and response to all offers or counter-offers; and
(b) Active participation in assisting in complying with the terms and conditions of the contract and with the finalization of the transaction;

If the broker in the transaction is not providing the service, advice or assistance described in Paragraphs (a) and (b) of this Subsection B of 16.61.19.8 NMAC, the party must agree in writing that the broker is not expected to provide such service, advice or assistance;

(2) Acknowledgement by the broker that there may be matters related to the transaction that are outside the broker’s knowledge or expertise and that the broker will suggest that the party seek expert advice on these matters;

(3) Advice to consult with an attorney regarding the effectiveness, validity or consequences of any written document generated by the brokerage or presented to the party and that has the potential to become an express written agreement.

(4) Prompt accounting for all money or property received by the broker;

(5) Maintenance of any confidential information learned in the course of any prior agency relationship unless the disclosure is with the former principal’s written consent or is required by law;

(6) Written disclosure of brokerage relationship options available in New Mexico;

(7) Unless otherwise authorized in writing, a broker who is directly providing real estate services to a seller/owner shall not disclose the following to the buyer/tenant in a transaction:

(a) That the seller/owner has previously indicated they will accept a sales/lease price less than the asking or listed price of a property;
(b) That the seller/owner will agree to financing terms other than those offered;
(c) The seller/owner’s motivations for selling/leasing; or
(d) Any other information the seller/owner has requested in writing remain confidential, unless disclosure is required by law;

(8) Unless otherwise authorized in writing, a broker who is directly providing real estate services to a buyer/tenant shall not disclose the following to the seller/owner in the transaction:

(a) That the buyer/tenant has previously indicated they will pay a price greater than the price submitted in a written offer;
(b) The buyer/tenant’s motivation for buying/leasing; or
(c) Any other information the buyer has requested in writing remain confidential, unless disclosure is required by law.

(9) In the event the broker is working for the landlord (owner) as a residential property manager, the broker additionally owes to the landlord (owner) all duties owed under the law of agency.

C. In addition to the broker duties owed to prospective buyers, sellers, landlords (owners) and tenants as set forth in this Section 16.61.19.8(A), Brokers working as Property Managers for a landlord (owner) owe the following duties to tenants:

(1) Prompt accounting for all money or property received by the broker from the tenant, including issuance of a receipt for cash received;
(2) If a residential property manager, written disclosure that the broker is the agent of the owner of the property and not of the tenant; in the commercial property management context, written disclosure of the broker’s relationship with the landlord (owner).

D. Broker Obligations to Other Brokers. Brokers owe the following professional obligations to other brokers; however, brokers are not required to provide to one another a list of these broker obligations:
Honesty, reasonable care, and ethical and professional conduct;
(2) Timely presentation of offers or counter-offers and responses thereto, unless otherwise agreed to in writing by the party to whom the broker is directly providing real estate services;
(3) Active participation in assisting the party to whom the broker is directly providing real estate services in complying with the terms and conditions of the contract and with the closing of the transaction, unless otherwise agreed to in writing by the party to whom the broker is directly providing real estate services;
(4) Compliance with local, state, and federal fair housing and anti-discrimination laws, the New Mexico real estate license law and the Real Estate Commission rules; the New Mexico Uniform Owner-Resident Relations Act, and other applicable local, state, and federal laws and regulations;
(5) Written disclosure of any adverse material facts actually known by the broker about the property or the transaction, or about the financial ability of the parties to the transaction to complete the transaction; adverse material facts requiring disclosure do not include any information covered by federal fair housing laws or the New Mexico Human Rights Act;
(6) Written disclosure of any potential conflict of interest that the broker has in the transaction, including but not limited to, any material interest the broker has in the transaction or any relationship of a business, personal, or family nature that the broker has with a party to the transaction;
(7) Non-interference with a purchase agreement or any express written agreement that another broker has with a buyer, seller, landlord (owner) or tenant.