

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 62 REAL ESTATE APPRAISERS
PART 13 DISCIPLINARY PROCEEDINGS**

16.62.13.1 ISSUING AGENCY: Regulation and Licensing Department - NM Real Estate Appraisers Board.
[10/1/97; 16.62.13.1 NMAC - Rn, 16 NMAC 62.13.1, 09/13/2004; A, 01/01/2015]

16.62.13.2 SCOPE: All trainee real estate appraisers, licensed residential real estate appraisers, residential certified real estate appraisers, general certified real estate appraisers and temporary licensed or certified real estate appraisers.
[10/1/97; 16.62.13.2 NMAC - Rn & A, 16 NMAC 62.13.2, 09/13/2004; A, 01/01/2015; **A, xx-xx-2019**]

16.62.13.3 STATUTORY AUTHORITY: This part is promulgated pursuant to the real estate appraisers board, Sections 61-30-7, 15, 16 and 22 NMSA 1978 as amended.
[10/1/97; 16.62.13.3 NMAC - Rn, 16 NMAC 62.13.3, 09/13/2004]

16.62.13.4 DURATION: Permanent.
[10/1/97; 16.62.13.4 NMAC - Rn, 16 NMAC 62.13.4, 09/13/2004]

16.62.13.5 EFFECTIVE DATE: October 1, 1997, unless a later date is cited at the end of a section.
[10/1/97; 16.62.13.5 NMAC - Rn & A, 16 NMAC 62.13.5, 09/13/2004]

16.62.13.6 OBJECTIVE: This part lists actions which can be the cause of disciplinary action by the board against a trainee, licensee or certificate holder and provides a procedure for a respondent to accept a letter of reprimand pursuant to violations of law or regulations.
[10/1/97; 16.62.13.6 NMAC - Rn, 16 NMAC 62.13.6, 09/13/2004; A, 11/25/06, A, 01/01/2015]

16.62.13.7 DEFINITIONS: “Complaint committee” shall be appointed by the board. Complaint committee chairperson shall be an appraiser board member. The complaint committee is for the purpose of evaluating complaints.
[10/1/97; 16.62.13.7 NMAC - Rn & A, 16 NMAC 62.13.7, 09/13/2004; A, 01/01/2015]

16.62.13.8 FILING COMPLAINT: Upon receipt of a sworn complaint against any person who is a trainee, licensed or certified under the Real Estate Appraisers Act, the board may administratively evaluate the complaint to determine whether sufficient information of a potential violation of board statute or rules, or the national uniform standards of professional appraisal practice (USPAP) exists to pursue investigation and possible formal disciplinary action. Upon receipt of a complaint, the board may:

- A. evaluate or investigate the alleged violations;
- B. refer the matter to a peer committee; or
- C. dispose of a complaint if it determines that there is insufficient information, lack of probable cause, lack of jurisdiction or if the complaint is determined to be frivolous.

[10/1/97; 16.62.13.8 NMAC - Rn & A, 16 NMAC 62.13.8, 09/13/2004; A, 01/01/2015]

16.62.13.9 REVIEW OF COMPLAINT: The chairman of the board shall appoint at least one appraiser member of the board to evaluate each complaint filed with the board.

A. The board member appointee/evaluator shall also be chairperson of the complaint committee. The administrative reviewevaluation of complaints shall be completed by this person.

B. If the board member appointee or evaluator determines that there is insufficient information, lack of probable cause, lack of jurisdiction or if the complaint is determined to be frivolous, an investigation shall not be initiated and the complaint shall be referred to the Board with a recommendation that the case be closed. If the chair of the complaint committee determines that the complaint merits further investigation, the complaint will be assigned to the complaint committee.

[B.]C. The complaint committee may perform a regulatory review of an appraisal that is the subject of a complaint. Complaint committee members shall be competent to perform a regulatory review of an appraisal.

[C.]D. The complaint committee may refer the appraisal that is the subject of a complaint to a peer committee to perform a Standard 3 review of the appraisal.

[D.](E.) Upon completion and review of the investigation initiated pursuant to this regulation, the board member appointee/evaluator along with the complaint committee shall either recommend to the board action in lieu of disciplinary action, a recommendation for disciplinary action, or a recommendation that the case be closed [~~or shall submit to the board a recommendation for further disciplinary action.~~].

[E.]~~If the board member appointee/evaluator and board counsel determine that there is insufficient information, lack of probable cause, lack of jurisdiction or if the complaint is determined to be frivolous, an investigation shall not be initiated and the complaint shall be deemed invalid and closed without further incident.]~~
[10/1/97; 16.62.13.9 NMAC - Rn & A, 16 NMAC 62.13.9, 09/13/2004; A, 01/01/2015; A, xx-xx-2019]

16.62.13.10 RESPONDING TO COMPLAINT:

A. In response to an investigation against any person who is a trainee, licensed or certified under the Real Estate Appraisers Act, the respondent must respond within 10 business days of receipt as allowed by the Uniform Licensing Act.

B. Failure to respond within time frame specified may result in disciplinary action up to and including revocation of license at the discretion of the board.

[16.62.13.10 NMAC - N, 11/25/06; A, 01/01/2015; A, 01/15/2017]

16.62.13.11 [RESERVED]

16.62.13.12 REPRIMAND PUBLIC RECORD: The fact that a trainee appraiser, license or certificate holder has received a letter of reprimand is a matter of public record.

[10/1/97; 16.62.13.12 NMAC - Rn & A, 16 NMAC 62.13.12, 09/13/2004; A, 01/01/2015]

16.62.13.13 PRIVATE REMEDY: Action or non-action by the board on any complaint does not preclude any private remedy taken by the complainant.

[10/1/97; 16.62.13.13 NMAC - Rn, 16 NMAC 62.13.13, 09/13/2004]

16.62.13.14 REFUSAL, SUSPENSION OR REVOCATION:

A. Disciplinary proceedings may be instituted by the sworn complaint of any person, including members of the board, filed with the board. The complaint shall conform with the provisions of the Uniform Licensing Act, Section 61-1-1 et seq., NMSA 1978.

B. In accordance with the procedures contained in the Uniform Licensing Act, the board may deny, revoke or suspend any trainee, license or certificate held or applied for upon finding, after a hearing, that the trainee appraiser, licensee, certificate holder or applicant has violated any provision of the Real Estate Appraisers Act (Section 61-30-1 et seq., NMSA 1978) or regulations or continually or repeatedly or persistently or willfully violated any of the prohibitions found hereinafter:

- (1) obtaining or attempting to obtain any fee through fraud, misrepresentation, or other dishonesty;
- (2) impersonating another person trainee, licensed or certified to practice real estate appraisal or permitting or allowing any person to use his/her registration, license or certificate;
- (3) aiding or abetting the practice of real estate appraisal by a person not a trainee, licensed or certified by the board;
- (4) the suspension or revocation by another state of a trainee registration, license or certificate to practice real estate appraisal based upon acts by the trainee appraiser, certificate holder or licensee similar to acts described in the section;
- (5) the solicitation of any person either by a trainee appraiser, licensee or certificate holder or by one in his/her employ or under his/her control under circumstances suggesting that the appraiser or other person was taking advantage of the person being solicited from making a rational independent decision as to whether or not to obtain the services of an appraiser, or any particular appraiser;
- (6) falsifying of real estate appraisal records, whether or not for personal gain;
- (7) practicing beyond the scope of the trainee, license or certificate as defined by state law and/or regulations;
- (8) advertising in any manner that violates the board's regulation on advertising, as provided in 16.62.16 NMAC; or
- (9) making false statements in any application for trainee, licensure or certification.

C. If the complaint committee, following an investigation and review, believes there is sufficient evidence that would justify denying, revoking or suspending a professional license or taking other disciplinary action, it will recommend to the board to issue a notice of contemplated action (“NCA”).

D. Based on the board’s decision, board staff will send a request for an NCA to the litigation division of the attorney general’s office. The NCA request must include a description of the licensee’s allegedly improper conduct and the provisions of the board’s practice act and rules that the conduct allegedly violated. If the respondent is an applicant, the NCA must include an explanation as to why the board is contemplating denying licensure. An assistant attorney general in the litigation division, referred to as the “administrative prosecutor,” will review the file. Based on his/her review, the administrative prosecutor may return the file to the board for additional investigation or information or will draft an NCA.

E. Constitutional due process principles require a board to conduct an administrative hearing at the timely request of a respondent who has been served with an NCA. The respondent is entitled to:

- (1) a statement of the charge(s);
- (2) notice of the time and place of the hearing;
- (3) a hearing before an impartial decision maker;
- (4) the right to cross-examine witnesses who testify against him/her;
- (5) the right to present his or her own witnesses, and
- (6) the right to be represented by an attorney or a licensed member of the profession or both.

[10/1/97; 16.62.13.14 NMAC - Rn & A, 16 NMAC 62.13.14, 09/13/2004; A, 11/25/06; A, 01/01/2015]

16.62.13.15 DELEGATION OF AUTHORITY: The authority of the real estate appraisers board to issue a notice of contemplated action against any licensee/registrant or applicant for licensure/registration whose name appears on the certified list issued by the New Mexico department of human services, as provided in NMSA 1978, 40-5A-1, et seq, and to refer cases in which notices of contemplated action have been issued for administrative prosecution, is delegated to the administrator of the board. This section shall not be construed to deprive the board of its authority and power to issue a notice of contemplated action for any apparent violation of the Parental Responsibility Act, and to refer any such case for administrative prosecution.

[16.62.13.15 NMAC - N, 01/16/2011]

HISTORY OF 16.62.13 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the state records center and archives under:

REAB Rule 13, Discipline: Letter of Reprimand, filed 11/29/90.

Rule 14, Discipline: Letter of Reprimand, filed 4/6/93.

Rule 14, Discipline: Letter of Reprimand, filed 1/28/94.

REAB Rule 14, Refusal, Suspension or Revocation of License or Certificate, filed 11/29/90.

Rule 15, Refusal, Suspension or Revocation of License or Certificate, filed 4/6/93.

Rule 15, Refusal, Suspension or Revocation of Registration, License or Certificate, filed 1/28/94.

History of Repealed Material: [RESERVED]

Other History:

Rule 15, Refusal, Suspension or Revocation of Registration, License or Certificate (filed 1/28/94) was renumbered, reformatted and replaced by 16 NMAC 62.13, Disciplinary Proceedings, effective 10/01/1997.

16 NMAC 62.13, Disciplinary Proceedings (filed 8/29/97) was renumbered, reformatted, amended, and replaced by 16.62.13 NMAC, Disciplinary Proceedings, effective 09/13/2004.