

Brokerage Relationships – Update 2000

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Approved for 4 Education Credits by the New Mexico Real Estate Commission

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I. BROKERAGE RELATIONSHIP UPDATE:

- New Agency Law effective 01-01-2000 (61-29-10.1-3)

Important Clarifications

- **Agency Relationships:** "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".
- **Non-Agency Relationships:** "... a buyer, seller, landlord or tenant using real estate services without entering into an express written agreement will be a customer of the brokerage providing the real estate services, and no agency relationship or agency duties will be imposed."

New Mexico Real Estate Commission Responsibilities:

Shall promulgate rules governing:

- the rights and responsibilities of clients and customers
- the rights, responsibilities and duties of a Brokerage

Duties of Licensees:

- All licensees will perform the duties of licensees as prescribed by the commission (NMREC)

II. DEFINITIONS AND TERMINOLOGY

NMREC Part 1: General Provisions, Section 7: Definitions (eff. 1-1-2000):

- Brokerage Relationship
- Agent
- Client
- Customer
- Nonagent
- Principal.
- Other Definitions and Terms -

III. BROKERAGE RELATIONSHIPS DEFINED AND REGULATED IN NEW MEXICO:

1. Exclusive Agency
2. Dual Agency
3. Nonagency

IV. NM REAL ESTATE COMMISSION RULES & REGULATIONS, PART 19:

Disclosure Requirements To All Consumers

- Must be in writing
- Specific information to include
- Timing of disclosure

Licensee Basic Duties Owed Consumers

RANM Form 1401, "Consumer Choices" Disclosure Form

- Available for use by every New Mexico licensee

Exclusive Agency Relationship and Disclosure

- Written authority & Scope of authority
- Seller agency
- Buyer agency
- Agency duties
- Disclosure requirements

Designated Agency and the Designated Agent

- A Qualifying Broker's choice
- Company policy
- Role of the Qualifying Broker
- Designated agent: how appointed
- Duties owed
- Disclosure Requirements:

Questions and Discussion About Designated Agency:

1. *When is Designated Agency not an appropriate office policy?*
2. *How does designated agency relate to the common law of agency?*
3. *Other questions ...*

Nonagency Relationships

- Background and evolution
- Other states & New Mexico
- How Created
- Written agreement
- No written agreement
- Disclosure requirements

Three Important New Concepts

- Client relationship
- Exclusive relationship
- Representation?

Questions and Discussion About Nonagency:

1. *What must a licensee avoid doing when working as a Nonagent?*
2. *What must a consumer understand about a Nonagency relationship?*
3. *Other questions ...*

V. DUAL AGENCY RELATIONSHIP AND DISCLOSURE

- Three distinct situations
- Modification of agency duties to clients
- Facilitator
- Separate, written Dual Agency agreement
- Listing agreement information
- Buyer agency agreement information

Questions and Discussion About Dual Agency:

1. *What is an in-house transaction?*
2. *When do you discuss dual agency with a consumer?*
3. *Why do you need a separate written Dual Agency agreement?*
4. *How does Designated Agency as an office policy affect dual agency situations?*
5. *Other questions ...*

VI. THE REVISED NMREC COMPLIANCE GUIDE

- Q&A format
- Official interpretation of Part 19

VII. NMREC DISCIPLINARY ACTIONS FOR FAILURE TO COMPLY WITH PART 19 REQUIREMENTS

Other Questions and Discussions ...