

This is an amendment to Section 7 of 16.61.1 NMAC, effective 1-01-19.
Subsections A through YY of 16.61.1.7 NMAC, were not listed below as there were no changes.

16.61.1.7 DEFINITIONS:

~~[ZZ.] “Short term/vacation rental”: with the exception of hotels and motels, the rental of real property for a period of 29 days or less.]~~

~~[AAA.] ZZ.~~ “Special trust account”: an account at an acceptable financial institution established by the qualifying broker for the purpose of holding money of a named party to a transaction. This account may be interest bearing.

~~[BBB.] AAA.~~ “Sponsor”: an organization or entity approved by the real estate commission to offer courses approved by the real estate commission.

~~[CCC.] BBB.~~ “Subagent”: an agent of the agent, authorized to act for the agent in performing functions undertaken by the agent for his principal.

~~[DDD.] CCC.~~ “Transaction coordinator”: a person engaged by a broker who assists the broker in the processing of the real estate transaction, and whose services may include, but not be limited to, the following: gathering necessary information and paperwork for and from buyers and sellers, overseeing and organizing contractual deadlines, communicating and coordinating with lenders, title companies, inspectors, other brokers in the transaction and the parties to the contract to facilitate the closing of the real estate transaction, and assembling the final real estate transaction file for closing.

~~[EEE.] DDD.~~ “Transaction”: any real estate activity subject to the jurisdiction of the commission.

~~[FFF.] EEE.~~ “Transaction broker”: a qualifying broker, associate broker or brokerage that provides real estate services without entering into an agency relationship. The transaction broker relationship is a non-fiduciary relationship.

~~[GGG.] FFF.~~ “Trust account”: an account at an acceptable financial institution established by the qualifying broker for the purpose of holding money of others received by the qualifying broker in a transaction which includes a brokerage trust account, property management trust account, custodial trust account or special trust account.

~~[HHH.] GGG.~~ “Unlicensed assistant”: a person who does not hold an active New Mexico broker’s license and works under the supervision of a responsible person to perform duties for the brokerage as provided in 16.61.21 NMAC.

~~[III.] HHH.~~ “Vacation rental”: With the exception of hotels and motels, a vacation rental is the rental of real property by a renter who does not manifest an intent to make the real property a permanent residence. Evidence that the renter does not intend to make the real property a permanent residence includes, but is not limited to, the following: landlord/property manager supplies all furnishings, appliances, bedding, towels, utensils, plates, and silverware.

~~[JJJ.] III.~~ “Virtual office”: A real estate brokerage office that provides communication and address services without providing dedicated office space.

[16.61.1.7 NMAC - Rp, 16.61.1.7 NMAC, 1-1-2012; A, 1-1-2017, A, 1-15-2018; A, 1-1-2019]

This is an amendment to Section 8 of 16.61.2 NMAC, effective 1-01-19.
Subsections A through J of 16.61.2.8 NMAC, were not listed below as there were no changes.

16.61.2.8 FEES:

K. ~~[For each application to the commission to become an approved instructor of real estate pre-licensing and continuing education courses, a fee not to exceed seventy dollars (\$70.00) per course. For each application to the commission to become approved to instruct a currently approved pre-licensing or continuing education course, a fee not to exceed seventy dollars (\$70.00) per course. For each application to the commission to renew certification as a commission approved instructor of real estate pre-licensing or continuing education courses, a fee not to exceed one hundred dollars (\$100.00).]~~

L. ~~[For each application to the commission to renew certification as a commission approved instructor of real estate pre-licensing and continuing education courses, a fee not to exceed one hundred dollars (\$100.00).]~~ For each application to the commission for approval of a new pre-licensing and continuing education course, a fee not to exceed fifty dollars (\$50.00) plus two dollars (\$2.00) for each credit hour up to a maximum of 10 credit hours. For applications to the commission for bulk course approval, defined as five or more courses at a single committee meeting, a reduced fee not to exceed twenty-five dollars (\$25.00) per course plus one dollar (\$1.00) for each credit hour up to a maximum of 10 credit hours.

[16.61.2.8 NMAC - Rp, 16 NMAC 61.2.8, 1-1-2002; A, 01-01-2004; A, 1-1-2006; A, 1-1-2012; A, 1-1-2019]

This is an amendment to Sections 11 through 14 of 16.61.3 NMAC, effective 1-01-19.

16.61.3.11 QUALIFYING BROKER CANDIDATE EDUCATION REQUIREMENTS FOR APPLICATION: An associate broker or salesperson licensed in another state who is applying for a qualifying broker license shall furnish the commission satisfactory evidence of:

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~~] core elective courses.

D. Attendance at one New Mexico real estate commission meeting, rule [public] hearing, or disciplinary hearing for at least three hours, or until the commission meeting goes into executive session, or the hearing/meeting ends, whichever comes first. Attendance may be by live meeting/hearing or by live or recorded distance broadcast; but must be documented by signing into and out of the meeting/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.

[16.61.3.9 NMAC – Rp. 16.61.3.11, 1-15-2018; A, 1-1-2019]

16.61.3.12 QUALIFYING BROKER APPLICATION REQUIREMENTS: An associate broker or salesperson licensed in another state who is applying for a qualifying broker license shall furnish the commission satisfactory evidence of:

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.

[16.61.3.9 NMAC - Rp. 16.61.3.12, 1-15-2018; A, 1-1-2019]

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.]~~ Eight hours of core elective courses.

C. Attendance at one commission meeting, rule hearing, or disciplinary hearing for at least three hours, or until the commission goes into executive session, or the hearing/meeting ends, whichever comes first. Attendance may be by live meeting/hearing or by live or recorded distance broadcast, but must be documented by signing into and out of the meeting/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.

[16.61.3.9 NMAC – Rp. 16.61.3.13, 1-15-2018; A, 1-1-2019]

16.61.3.14 PROPERTY MANAGEMENT EDUCATIONAL REQUIREMENTS: Qualifying brokers or associate brokers intending to offer property management services for others, shall as a condition of offering property management services complete the following education requirements:

A. Completion of the commission approved course, Uniform Owner-Resident Relations Act, or a commission approved equivalent property management related course, prior to offering property management services, and during every subsequent three-year licensing cycle.

B. As a condition of offering property management services, in addition to the course requirement in paragraph A above, associate brokers shall complete a minimum of six hours of approved continuing education courses in property management selected from the commission's most current approved course catalogue during each three-year licensing cycle.

C. Qualifying brokers who offer or intend to offer property management services for others, shall as a condition of offering such services, in addition to the course requirement in Section A above, complete a minimum of 12 hours of approved continuing education courses in property management selected from the commission's most current approved course catalogue, during each three-year licensing cycle.

D. While qualifying brokers are already subject to the meeting attendance renewal requirements listed in Section 13 C of 16.61.3 NMAC, associate brokers who offer or intend to offer property management services shall also be subject to the same meeting attendance requirements in Section 13 C of 16.61.3 NMAC, namely, the attendance at one commission meeting, rule hearing, or disciplinary hearing for at least three hours, or until the commission goes into executive session, or the hearing/meeting ends, whichever comes first. Attendance may be live meeting/hearing or by live or recorded distance broadcast, but must be documented by signing into and out of the meeting/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.

[N, 1-01-2019]

This is an amendment to Section 8 of 16.61.11 NMAC, effective 1-01-19.

16.61.11.8 REQUIREMENTS: Every real estate license expires every three years on the last day of the month following the broker's birth month, unless it is renewed on or before that date. Renewal of a license is the sole responsibility of each broker. A broker whose license has expired may reinstate their license without reexamination up to one year after expiration by paying a reinstatement fee three times the regular license renewal fee. A qualifying broker with multiple licenses cannot avoid paying the late fee on an expired license by allowing the license to expire and applying for an additional license. An application for an additional license within one year of the broker's license expiration date will only be accepted if the qualifying broker brings all other licenses current with respect to fees, continuing education, and other renewal requirements. In addition to paying a reinstatement fee, the broker will be required as a condition of reinstatement to provide documentation of the completion of 36 hours of commission-approved continuing education courses. ~~[Application for renewal shall be on the renewal form prescribed by the commission. Renewal forms will be mailed to brokers at the last residential mailing address on file at the commission. The broker must notify the commission of a residential address change within 10 days of address change.]~~ The commission shall email online license renewal forms and all related web links to brokers at the broker's email address on file at the commission. Brokers are responsible for providing the commission with a current email address, and phone number; and, for notifying the commission within 10 days of a change of email address. Brokers must also maintain a current residential address with the commission and notify the commission within 10 days of a residential address change. The qualifying broker may pay a commission to a broker whose license is expired or to the estate of a deceased broker if the transaction was under contract while the broker's license was current.

[8-15-97; A, 1-1-2000; 16.61.11.8 NMAC - Rn & A, 16 NMAC 61.11.8, 1-1-2002; A, 01-01-2004; A, 1-1-2006; A, 12-31-2008; A, 1-1-2012; A, 1-1-2017; A, 1-1-2019]

This is an amendment to Section 8 of 16.61.13 NMAC, effective 1-01-19.

16.61.13.8 REQUIREMENTS: Except for brokers who are exempt from continuing education by virtue of having attained 65 years of age and a minimum of 20 years of continuous licensure prior to July 1, 2011;

A. All active and inactive associate brokers and qualifying brokers shall successfully complete a minimum of 36 credit hours of continuing education in courses approved by the commission during each licensing cycle.

B. Required courses include the four hour New Mexico real estate commission (NMREC) core course to be completed annually; a four hour commission-approved core elective course to be completed once during each three year licensing; and four hours of commission-approved ethics courses to be completed during each three year licensing cycle.

C. Of the remaining 16 credit hours, no more than 10 credit hours may be earned toward the continuing education requirement from commission-approved training category courses. All 16 remaining credit hours may be earned toward the continuing education requirement from commission-approved education category courses.

D. The NMREC core course requirements shall apply to those associate brokers and qualifying brokers who have not completed the eight hour mandatory course in their current licensing cycle by December 31, 2016. If a broker has so completed the eight hour mandatory course, the NMREC core course requirement will not apply until their next licensing cycle. Brokers who have completed the eight hour mandatory course in their current licensing cycle and who wish to take the NMRE core course will receive four additional hours of education category credit in their current licensing cycle.

E. The NMREC core course will have a unique course name and course number each year, including the year in which it was presented. The commission shall ensure that the content is unique for each year's course to ensure that brokers are not receiving identical information in more than one course.

F. Pursuant to 16.61.11.8 NMAC, the licensee's license will expire and can only be renewed within one year of expiration by payment of a late fee, and successful completion of all renewal requirements; including all applicable core course requirements. If a licensee fails to meet the core course requirements at the time of renewal, and are not exempt under 16.61.13.8 NMAC, the following policy will be in effect until December 31, 2019.

(1) If a broker failed to complete the core course required for the renewal year, the third calendar year of their license renewal cycle, the broker must complete that core course with a core course instructor, in a regular core course class setting, or another format that has been approved by the commission.

(2) If a broker failed to complete the core course required for the first and/or second years of their license renewal cycle, the broker must complete that core course with a core course instructor, in a regular core course class setting, or other format that has been approved by the commission. The broker will have the option to repeat the current year's core course, with a different instructor, to fulfill the renewal requirements of the first and/or second year's core course. The broker will be given credit for the repeated core course for renewal purposes, but will not be given any continuing education credit for the repeated core course.

(3) Effective January 1, 2020, paragraph (2) above will be replaced by the following: If a broker failed to complete the core course required for the first and/or second years of their license renewal cycle, the broker will be required to successfully complete the 30-hour broker basics course. The broker will be given credit for renewal purposes, but will not be given any continuing education credit. [

~~[F.]~~ **G.** Commission-approved pre-licensing courses may count for up to 10 credit hours toward continuing education credit for license renewal. The commission approved 30 hour post-licensing course may also count for up to 10 education category credit hours toward continuing education.

~~[G.]~~ **H.** No commission-approved continuing education course in either the education or the training category will be granted more than 10 credit hours of continuing education credit.

~~[H.]~~ **I.** Continuing education credit hours cannot be carried forward to the next licensing cycle.

~~[I.]~~ **J.** The same continuing education course cannot be repeated for credit in a three-year renewal cycle.

~~[J.]~~ **K.** Brokers may receive up to a maximum of four approved education course credit hours during each licensing cycle for attending commission meetings, rule hearings, disciplinary hearings, or meetings of the education advisory committee (EAC).

~~[K.]~~ **L.** Approved instructors may use up to 10 credit hours during each three-year licensing cycle toward fulfillment of their own continuing education requirements for teaching commission approved courses. Teaching documentation must be provided by the course sponsor.

~~[L.]~~ **M.** Classes required by the commission for disciplinary reasons cannot be counted towards the continuing education requirements for license renewal.

N. Pursuant to 16.61.3.14 NMAC, all brokers who intend to offer property management services for others, shall as a condition of offering property management services complete the education requirements as listed below:

(1) Completion of the commission approved course, Uniform Owner-Resident Relations Act, or a commission approved equivalent property management related course, prior to offering property management services, and every subsequent three year licensing cycle.

(2) As a condition of offering property management services, in addition to the course requirement in subsection A above, associate brokers shall complete a minimum of six hours of approved continuing education courses in property management selected from the commission's most current approved course catalogue during each three-year licensing cycle.

(3) Qualifying brokers who offer or intend to offer property management services for others, shall as a condition of offering such services, in addition to the course requirement in subsection A above, complete a minimum of 12 hours of approved continuing education courses in property management selected from the commission's most current approved course catalogue, each three-year licensing cycle.

(4) While qualifying brokers are already subject to the meeting attendance requirements for license renewal under Subsection C of 16.61.3.13 NMAC, associate brokers who offer or intend to offer property management services shall also be subject to the same meeting attendance requirements namely, the attendance at one commission meeting, rule hearing, or disciplinary hearing for at least three hours, or until the commission goes into executive session, or the hearing/meeting ends, whichever comes first. Attendance may be live meeting/hearing or by live or recorded distance broadcast, but must be documented by signing into and out of the meeting/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.

[1-1-2000; 16.61.13.8 NMAC - Rn & A, 16 NMAC 61.13.8, 1-1-2002; A, 1-1-2006; A, 1-1-2007; A, 12-31-2008; A, 1-1-2012; A, 1-1-2017; A, 1-1-2019]

This is an amendment to Sections 9 through 12 of 16.61.15 NMAC, effective 1-01-19.

16.61.15.9 APPROVAL OF EDUCATION PROGRAMS:

A. Courses offered for New Mexico real estate commission approved credit must be offered by sponsors approved by the New Mexico real estate commission and be taught by instructors approved by the commission.

B. Applications for sponsor, instructor and course approvals shall be accompanied by the fee(s) specified in 16.61.2.8 NMAC of the commission rules.

(1) An approved education category course shall consist of a course offered by a commission approved sponsor in real estate law and practice; real estate financing including mortgages and other financing techniques; material specific to the regulatory, and ethical practice of real estate; and real estate related local, state and federal laws including but not limited to fair housing, the Americans with Disabilities Act (ADA), and lead-based paint disclosure.

(2) Approved training category courses include personal and property protection for the broker and clients; using the computer, the internet, business calculators and other technologies to enhance the broker's service to the public; concerning professional development, customer relations skills, sales promotion including salesmanship, negotiation, marketing techniques, servicing the client, or similar courses.

(3) With the exception of courses taken in states with which New Mexico has a written license recognition agreement, non-acceptable continuing education classes shall include courses taken in fulfillment of another state's continuing education requirements. Other non-acceptable courses include mechanical office and business skills such as typing; speed reading; memory improvement; language report writing; offerings concerning physical well-being or personal development such as personal motivation; stress management; time management; dress-for-success; or similar courses.

C. The committee shall review instructor candidates:

- (1) to determine the candidate's knowledge of the subject matter;
- (2) to determine the candidate's ability to communicate his/her knowledge to students;
- (3) to determine if the candidate uses appropriate teaching delivery skills;
- (4) to determine if the candidate is honest, truthful, reputable, professional, and competent.

[16.61.15.9 NMAC - Rp, 16.61.15.9 NMAC, 1-1-2012; A, 1-1-2017; A, 1-1-2019]

16.61.15.10 APPROVAL OF SPONSORS AND RESPONSIBILITIES:

A. All sponsors wishing to offer commission approved courses for credit must be approved by the commission before the course being offered for credit.

B. Educational institutions, proprietary schools, professional organizations or businesses wishing to become commission approved sponsors must submit a completed sponsor application form with supporting documentation as required by the commission.

C. The commission will maintain a list of approved sponsors.

D. An approved sponsor shall comply with the following requirements:

(1) conduct all courses in accordance with commission rules and education policies, and in accordance with approved course content;

(2) permit all New Mexico real estate brokers to attend all classes offered by the sponsor for which continuing education credit is awarded;

(3) document electronically to the real estate commission that the student has completed the course;

(a) certify no candidate as successfully completing the broker basics or brokerage office administration course unless the student has attended at least ninety percent of the classroom instruction and has passed a written examination at the conclusion of the course;

(b) certify no broker as successfully completing a commission approved course unless the broker has attended 50 minutes of each hour, or successfully completed a distance education course approved by the New Mexico real estate commission. [~~In the case of a course that is offered in both live and distance education formats, the sponsor shall have discretion as to completion and certification;~~]

(4) maintain current, complete, and accurate student records; these records shall include, but not be limited to, a record of payments made, a record of attendance, and a record of course work completed; records shall be maintained for a period of three years;

(5) permit the commission or its representative access to classes being conducted, and make available to the commission, upon request, all information pertaining to the activities of the sponsor;

(6) advertise at all times in a manner free from misrepresentation, deception or fraud; all course advertising must include the name of the commission-approved sponsor, and must specify whether the course is in the education or training category;

(7) in the event a sponsor determines that it intends to cease sponsoring real estate classes it shall inform the commission in writing not less than 30 days before cessation;

(8) advise the commission within 30 days of changes in ownership, directorship, financial status, location or other pertinent information, and reapply for sponsorship in the event of change of majority ownership;

(9) at the end of each course, the sponsor shall collect from each student an evaluation that evaluates adherence to course content, the effectiveness of the instructor, and other prescribed criteria; the evaluation forms shall be maintained by the sponsor for not less than one year and shall be made available to the commission, or any duly authorized commission representative, upon request;

(10) renew sponsorship approval every three years by submitting a sponsor renewal form and renewal fee to the commission;

(11) shall meet the requirements of the Americans with Disabilities Act and all other local, state and federal laws.

E. Failure to comply with this rule may result in the loss of sponsor approval. The commission may investigate any claim of violation of this rule. [~~pursuant to 16.61.36.8 NMAC of the commission rules.~~]
[16.61.15.10 NMAC - Rp, 16.61-15.10 NMAC, 1-1-2012; A, 1-1-2019]

16.61.15.11 APPROVAL OF COURSES:

A. Any pre-licensing or continuing education course must have been approved by the commission before the course being offered for credit. Courses must incorporate New Mexico law and [~~regulations~~] rules when relevant. A course application form must be completed and submitted to the commission before consideration of a course for approval by the committee.

(1) Before course approval, the instructor teaching the course shall make a presentation before the committee according to presentation criteria established by the committee.

(2) The committee shall assign the number of credit hours to each course and determine whether the course is in the education or training category.

(3) Commission approved pre-licensing courses may count for up to ten credit hours toward continuing education requirements for license renewal.

B. The committee may waive a course presentation appearance by a nationally recognized professional real estate organization that provides professional designations if the organization can document to the committee's satisfaction that the course instructor received training in the course subject matter in addition to attending a train the trainer class.

C. The commission must approve any continuing education course offered for one-time credit before the course being offered.

(1) A commission approved application form for one-time credit approval must be completed and submitted to the committee before consideration of the course for credit.

(2) Approved sponsors are limited to [~~four~~] 10 course submittals for one-time credit during each calendar year.

(3) The sponsor, or its representative, requesting one-time course credit, shall make a presentation before the committee according to presentation criteria established by the committee.

D. The course shall conform to the generally accepted principles of education as prescribed by the real estate educators association (REEA) and shall comply with commission approved course content requirements. The minimum length of a course shall be one hour.

E. The commission will maintain a list of courses that have been approved for credit.

F. If the course represents an update to a previously approved course, and new material becomes available, the instructor shall be responsible for updating the course and presenting the most current information. Significant changes to course outlines should be provided by the instructor to the commission's education administrator as they occur. If a course outline has not been updated within the last three years the committee may, at its discretion, recommend to the commission that the course be removed from the list of approved courses.

G. Distance education: For purposes of this part, distance learning is education and training that takes place outside of the traditional classroom setting and in which non-traditional instructional media are used because the teacher and student are separated by distance or time. Distance education sponsors seeking continuing education

credit for their courses will be required to designate a New Mexico approved instructor to make a presentation to the committee and shall submit for committee review and approval:

- (1) course syllabus which clearly states the course objectives and the specific learning objectives for desired student competencies;
- (2) instructions for accessing, using and testing the online materials for committee auditing purposes including everything necessary for evaluating course content materials, duration, accuracy and timeliness;
- (3) reference materials appropriate to the course;
- (4) when a series of courses is offered in a curriculum, evidence of sequential development and logical progression;
- (5) description of the method, such as examination and quizzes, by which student progress and mastery of the subject matter are measured, and for determining what is required for a student to successfully complete the course;
- (6) description of the method by which student identity is verified, such as user name and password;
- (7) the names, telephone numbers and email addresses of individuals, web-sites or other resources that students can contact for technical assistance;
- (8) the name and contact information of the New Mexico instructor approved to teach the course who will be available to answer subject matter questions during regularly posted hours;
- (9) a description of the methodology used by the sponsor in determining the classroom hour equivalency of each distance education course.

H. Live distance education is distance education in which the teacher and student are separated by distance, but not time. In addition to the requirements of subsection G, the following regulations will apply to live distance education. Live distance education sponsors and instructors seeking approval to offer continuing education credit will be required to designate a New Mexico approved instructor to make a presentation to the committee and shall submit for submit for committee approval the following:

- (1) The technology a sponsor intends to use to provide live distance education will be in place, at the place of instruction and at student location(s), and demonstrated to the committee in a situation as near to the actual proposed class setting as possible.
- (2) The sponsor or instructor will provide technical support sufficient to rectify minor technical problems. If there are interruptions that exceed the regulatory mandate of 50 minutes of instruction per hour, no credits will be issued to students.
- (3) At live distance education locations where there is a proctor provided by the sponsor or the instructor, a final examination is not required. At locations where there is no proctor, a final examination is required.
- (4) Live distance education core course instruction will be proctored, will have a maximum of 40 students total, and a minimum of five students at each location, unless there is a one teacher to one student instruction.

[16.61.15.11 NMAC - Rp, 16.61.15.11 NMAC, 1-1-2012; A, 1-1-2017; A, 1-1-2019]

16.61.15.12 APPROVAL OF INSTRUCTORS:

A. Commission approved course instructors. Instructors must be approved by the commission before teaching courses. The following requirements apply to all commission approved [courses] instructors.

- (1) Be honest, truthful, reputable, professional, and competent.
- (2) Submit a commission-approved application before presenting the course to the committee.
- (3) Complete a commission approved instructor training course within one year of being initially approved as an instructor and every three years thereafter. Instructors who fail to submit documentation of completion of the instructor-training course will not be re-certified.
- (4) Provide copies of student handouts during their course presentation.
- (5) Make a minimum 15 minute presentation to the committee exhibiting their teaching skills and knowledge of the subject matter, and be prepared to answer questions. Presentations must conform to the generally accepted principles of education (GAPE) as established by the real estate educators' association (REEA).

B. Pre-licensing instructors. Pre-licensing courses include: real estate law, real estate principles and practices, broker basics and brokerage office administration. In addition to Subsection A. above, these instructor candidates must:

- (1) pass the New Mexico broker's examination with a minimum score of 84 within the previous three years from the date of application;
- (2) audit the course they wish to teach before being approved as an instructor for that course; documentation of having audited the course must be submitted with the candidate's application;
- (3) broker basics: be approved to teach real estate law and real estate principles and practice;
- (4) brokerage office administration: be approved to teach real estate law and real estate principles and practice and broker basics; in addition, candidates must also have two-year's experience as a qualifying broker in New Mexico or another licensing jurisdiction.

C. Core course instructors. In addition to Subsection A. above core course instructor candidates must:

- (1) Successfully complete a core course training [and be approved by the committee;] class recommended by the committee and approved by the commission; and
- (2) [ensure the NMREC core course materials they present include the most recent updates provided by the New Mexico real estate commission;] Teach the current core course twice for no compensation; teamed with two different approved core course instructors designated by the commission executive secretary or commission education administrator; and receive "above average" evaluations in both courses, and
- (3) [make a presentation to the committee and answer questions;] Appear before and be approved by the committee, including presentation to the committee of a component of the current year's core class; and
- (4) Appear before the commission, and be sworn in, and
- (5) Ensure that the core course materials the applicant presents includes the materials approved by the commission for the current calendar year that is being taught.

D. Qualifying broker refresher course instructors. In addition to Subsection A above, qualifying broker refresher course instructor candidates must comply with one of the following:

- (1) be a currently approved instructor for real estate law and real estate principles and practice and broker basics and be a qualifying broker or would qualify to be one; or
- (2) be approved to teach the ~~[mandatory]~~ core course and be a qualifying broker.

E. New broker business practices post-licensing course instructors. In addition to Subsection A above, new broker business practices course instructors must:

- (1) have two years' experience as an active qualifying broker with supervisory responsibilities or two years actively licensed as an associate broker and served in the capacity as a trainer for the brokerage, or two years actively licensed as an associate broker and be approved as a continuing education instructor;
- (2) attend, when offered, a commission approved train-the-trainer on how to instruct the post-licensing course and attend, when offered, a periodic update of the course offered by the commission or the commission contractor; and

~~[(3) — make a minimum 60 minute presentation to the committee and answer questions.]~~

F. Committee approval process. The committee will make its recommendation to the commission to grant or deny instructor approval. If the application is denied, a written evaluation to the candidate will provide specific reasons for denial and recommendations for improvement. An instructor candidate not recommended for approval by the committee may ask the commission to review the committee's unfavorable recommendation.

G. Post-approval requirements. After approval all instructors must comply with the following:

- (1) pay applicable fee(s);
- (2) conduct all classes in accordance with commission rules and educational policies;
- (3) ensure all instruction is free from all misrepresentation, solicitations of products and recruitment;
- (4) conform to commission-approved course content requirements; and
- (5) allow access to any class to any duly appointed representative of the commission.

H. Instructor approval expiration and re-certification.

(1) Expiration. Instructor approvals expire on the same three-year cycle as the instructor's broker's license. If an instructor is not a real estate broker, then the expiration will be three years from the date of initial approval.

(2) Re-certification. Instructors seeking re-certification shall:

- (a) submit the commission-approved form;
- (b) submit documentation of having completed a commission-approved instructor training course;

(c) an instructor who has not taught a course in the preceding three year instructor renewal cycle will not be recertified to teach that course; an instructor may submit at the time of renewal, a written request to the committee to be re-certified to teach that course; the written request must specify how the instructor has remained current on the course material, and must include the course outline and course material.

I. Failure to comply with this part may result in the loss of instructor approval. [~~The commission may investigate any claim of instructor impropriety pursuant to 16.61.36.8 NMAC of the commission rules.~~]
[16.61.15.12 NMAC - Rp, 16.61.15.12 NMAC, A 1-1-2017; A, 1-1-2019]

This is an amendment to Section 8 of 16.61.17 NMAC, effective 1-01-19.

16.61.17.8 **AFFILIATION:** An associate broker must be affiliated with a qualifying broker in order to engage in real estate brokerage business. An associate broker may have only one associate broker's license and be affiliated with only one qualifying broker at a time. If specified in the independent contractor agreement between the brokerage and the associate broker, an associate broker may perform brokerage services for different qualifying brokers within the same brokerage with the same ownership. A broker performing brokerage related services in the capacity of a transaction coordinator for multiple brokerages must have a qualifying broker's license issued by the commission.

[1-1-2000; 16.61.17.8 NMAC - Rn, 16 NMAC 61.17.8, 1-1-2002; A, 1-1-2006; A, 1-1-2012; A, 1-1-2019]

This is an amendment to 16.61.19 NMAC, Section 8, effective 1-01-19.

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.~~] herein, 16.61.19.8 NMAC. 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~~] herein, 16.61.19.8 NMAC, 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. Brokers shall perform all duties established for brokers by the commission. 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 or any other written agreement 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;
 - (c) Any written agreement the broker has with a transaction coordinator who will be providing brokerage services related to 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 Subsection A of 16.61.19.8 NMAC, 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 written 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),~~] this Subsection A of 16.61.19.8 NMAC, 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.

- (1) Honesty, reasonable care, and ethical and professional conduct;
- (2) Timely presentation of all written 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.

[16.61.19.8 NMAC - Rp, 16.61.19.8 NMAC, 1-1-2004; A, 1-30-2004; A, 3-27-2004; A, 1-1-2006; A, 1-1-2006, A, 1-1-2007; A, 12-31-2008; A, 1-1-2012; A, 1-1-2014. A-1-15-2018; A, 1-1-2019]

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 61 REAL ESTATE BROKERS
PART 20 TRANSACTION COORDINATOR

16.61.20.1 ISSUING AGENCY: New Mexico Real Estate Commission.
[16.61.20.1 NMAC - N, 01-01-2019]

16.61.20.2 SCOPE: The provisions in Part 20 of Chapter 61 apply to all New Mexico brokers.
[16.61.20.2 NMAC - N, 01-01-2019]

16.61.20.3 STATUTORY AUTHORITY: Part 20 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, NMSA 1978 61-29-4.
[16.61.20.3 NMAC - N, 01-01-2019]

16.61.20.4 DURATION: Permanent.
[16.61.20.4 NMAC - N, 01-01-2019]

16.61.20.5 EFFECTIVE DATE: January 1, 2019, unless a later date is cited at the end of a section.
[16.61.20.4 NMAC - N, 01-01-2019]

16.61.20.6 OBJECTIVE: The objective of Part 20 of Chapter 61 is to set forth the responsibilities, in addition to all other requirements imposed by law, of all brokers.
[16.61.20.6 NMAC - N, 01-01-2019]

16.61.20.7 DEFINITIONS: Refer to 16.61.1.7 NMAC.
[16.61.20.7 NMAC - N, 01-01-2019]

16.61.20.8 REQUIREMENTS.

A. Any transaction coordinator performing activities that require a New Mexico real estate license, including authoring and negotiating contracts and leases, must hold a current real estate license issued by the real estate commission.

B. A transaction coordinator performing activities for a brokerage under one ownership is not required to have a qualifying broker's license provided that the transaction coordinator is under the direct supervision of a qualifying broker of that same brokerage.

C. Any transaction coordinator providing services for multiple brokerages other than the transaction coordinator's own brokerage must hold a current New Mexico qualifying broker's license.

D. Any transaction coordinator providing services for a brokerage other than the transaction coordinator's own brokerage must have a transaction-specific written agreement with the qualifying broker of the brokerage for which those transaction coordinator services are being provided that details the services being provided by the transaction coordinator and any compensation being paid to the transaction coordinator for those services.

E. A broker who engages the services of a transaction coordinator to perform activities that may require a real estate license whether within the broker's brokerage or outside the broker's brokerage, shall be responsible for disclosing the name(s) of the transaction coordinator, in writing, to the buyer, seller and brokers in the transaction.

F. A broker who hires a transaction coordinator must have a transaction-specific written agreement with that broker's qualifying broker detailing the services being provided by the transaction coordinator and any compensation being paid to the transaction coordinator for those services, including written authorization that the transaction coordinator may be paid by the associate broker who has hired him or her.

G. A broker who hires a transaction coordinator remains responsible for the transaction; the hiring of a transaction coordinator in no way eliminates or mitigates the broker's responsibilities or obligations to the broker's customer or client or to other brokers and parties to the transaction.

H. Transaction coordinators may owe the following broker duties:

(1) If a transaction coordinator does not hold a real estate license and is not performing duties that require a real estate license, no broker duties are owed.

(2) If a transaction coordinator performs duties that require a real estate license, but only works for the broker that hired the transaction coordinator and has no interaction with the broker's customer or client or other brokers involved in the transaction, the transaction coordinator owes the broker duties under paragraphs (1) through (5) of Subsection A of 16.61.19.8 NMAC, as follows.

- (a) Honesty and reasonable care and ethical and professional conduct;
- (b) 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;
- (c) Performance of any and all written agreements made with the prospective buyer, seller, landlord (owner) or occupant;
- (d) Written disclosure of any potential conflict of interest or any other written agreement that the broker has in the transaction including but not limited to:
 - (i) Any written brokerage relationship the broker has with any other parties to the transaction or;
 - (ii) Any material interest or relationship of a business, personal, or family nature that the broker has in the transaction;
 - (iii) Any written agreement the broker has with a transaction coordinator who will be providing brokerage services related to the transaction.
- (e) 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.

(3) If a transaction coordinator performs duties that require a real estate license and works directly with a customer or client or other brokers and parties involved in the transaction, the transaction coordinator owes the following broker duties listed under paragraphs (1) through (5) of Subsection A of 16.61.19.8 NMAC listed in the preceding subparagraphs (a) through (e); and paragraphs (5) (7) and (8) of Subsection B of 16.61.19.8 NMAC, as follows.

- (a) The broker shall maintain 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;
- (b) 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/occupant in a transaction:
 - (i) That the seller/owner has previously indicated they will accept a sales/lease price less than the asking or listed price of a property;
 - (ii) That the seller/owner will agree to financing terms other than those offered;
 - (iii) The seller/owner's motivations for selling/leasing; or
 - (iv) Any other information the seller/owner has requested in writing remain confidential, unless disclosure is required by law;
- (c) 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:
 - (i) That the buyer/tenant has previously indicated they will pay a price greater than the price submitted in a written offer.
 - (ii) The buyer/tenant's motivation for buying/leasing; or
 - (iii) Any other information the buyer has requested in writing remain confidential, unless disclosure is required by law.

[16.61.20.8 NMAC - N, 01-01-2019]

This is an amendment to 16.61.23 NMAC, adds a new Section 12, effective 1-01-19.

16.61.23.12 **TRUST ACCOUNT DECLARATION AND RECORD KEEPING** : Qualifying brokers who offer property management services for others shall:

A. Execute and submit to the commission, on a form provided by the commission, a declaration of intent to offer such services. Such declaration will acknowledge the qualifying broker's responsibility for all property management services provided by the brokerage including maintenance of the records described below.

B. Maintain records of such services as provided in 16.61.23 NMAC and 16.61.24 NMAC, including:

(1) A list of all property management trust accounts maintained by the brokerage;

(2) The the name of the bank(s) at which such trust accounts are maintained;

(3) Monthly trust account reconciliation(s) demonstrating a three-way reconciliation between the trust account, the bank statement, and the property ledger;

(4) Trust account year-end balances.

C. Qualifying brokers who offer property management services for others shall review 16.61.23 NMAC and 16.61.24 NMAC of the commission rules with licensed and unlicensed personnel performing property management services at the brokerage.

D. Qualifying brokers offering property management services for others shall make the records and information delineated in this part available to the commission upon request.

E. Failure of a qualifying broker to comply with the provisions of 16.61.23.12 NMAC, shall subject the qualifying broker to disciplinary action.

[16.61.23.12 NMAC – N, 1-1-2019]

This is an amendment to Sections 9, 10, 13, 14, and 16 of 16.61.24 NMAC, and adds a new Section 17, effective 01-01-2019.

16.61.24.9 DECLARATION OF INTENT: ~~[At the time of initial licensure or renewal, brokers and associate brokers shall declare on the license application form their intent to offer property management services for others.]~~ At any time that a qualifying broker or associate broker offers or intends to offer property management services for others, the broker shall declare that intent on a form approved by the commission, and shall be subject to education and meeting attendance requirements pursuant to 16.61.3.14 NMAC, and delineated as follows:

A. Qualifying brokers and associate brokers who offer or intend to offer property management services for others, shall as a condition of offering property management services, first complete the commission approved course, Uniform Owner-Resident Relations Act, or a commission approved equivalent property management related course, prior to offering such services, and in every subsequent three-year licensing cycle.

B. Associate brokers who offer or intend to offer property management services for others, shall do so only with the knowledge, written permission and under the supervision of their qualifying broker. As a condition of offering property management services, in addition to the course requirement in Subsection A above, the broker shall complete a minimum of six hours of approved continuing education courses in property management selected from the commission's most current approved course catalogue during each three-year licensing cycle.

C. Qualifying brokers who offer or intend to offer property management services for others, shall as a condition of offering such services, in addition to the course requirement in Subsection A above, complete a minimum of 12 hours of approved continuing education courses in property management selected from the commission's most current approved course catalogue, each three-year licensing cycle.

D. Qualifying brokers and associate brokers shall attend at least one New Mexico real estate commission meeting, rule hearing, or disciplinary hearing for at least three hours, or until the commission goes into executive session, or the hearing/meeting ends, whichever comes first, in each three three-year licensing cycle. Attendance may be at a live meeting/hearing or by live or recorded distance broadcast; but must be documented by signing into and out of the meeting/hearing.

[16.61.24.9 NMAC - N, 1-1-2012; A, 1-1-2014; A, 1-1-2019]

16.61.24.10 COMPLIANCE WITH APPLICABLE LAW:

Brokers shall comply with applicable local, state and federal laws and ordinances concerning managing and leasing, and maintaining property for others, including but not limited to the following: ~~[the New Mexico Uniform Owner Resident Relations Act, Sections 47-8-1 through 47-8-52 NMSA 1978.]~~

- (1) Federal fair housing law
- (2) New Mexico Uniform Owner-resident Relations Act
- (3) Federal lead-based paint regulations, including provisions of the federal Environmental Protection Agency's lead-based paint renovation, repair and painting rule.

[16.61.24.10 NMAC - N, 1-1-2012; A, 1-1-2019]

16.61.24.13 MANAGEMENT AGREEMENTS:

A. There shall be a signed written management agreement between the brokerage and the owner for each property managed. The agreement shall be executed prior to acting on behalf of the owner and shall specify the brokerage relationship.

B. The agreement shall define the duties and responsibilities of the brokerage and the owner including, but not limited to, the following:

- (1) duties to be provided by the brokerage;
- (2) disclosure of all fees to be charged to owner;
- (3) disclosure of all fees to be charged to tenant that are retained by the brokerage; and
- (4) a question asking the owner to disclose the status of any foreclosure or other financial situation that could affect the tenant's occupancy.

C. If the property manager is prohibited by law or contract from providing the owner with a given document, such as a tenant's criminal background check or credit report, the property management agreement shall include the following:

- (1) a written disclosure to the owners that the property manager is prohibited by law or contract from providing such documents to the owner; or
- (2) the owner's written consent that such documents will not be provided.

D. The qualifying broker shall include with every written residential management agreement a copy, either in hard copy form or electronically, of the New Mexico Uniform Owner-Resident Relations Act. The qualifying broker shall obtain separate written confirmation from each client that the client has received such a copy of the act. The qualifying broker shall make this confirmation available to the New Mexico real estate commission if requested.

E. Before the brokerage transfers any management agreement to another brokerage, both the qualifying broker assigning the contract and the qualifying broker receiving the contract shall execute an assignment of contract. Because the management agreement is a personal services contract, the qualifying broker must have the property owner's written consent to assign the contract to another brokerage. If there is no assignment of contract, the qualifying broker receiving the contract must execute a new management agreement.

[16.61.24.13 NMAC - Rp, 16.61.24.13 NMAC, 1-1-2012; A, 1-1-2017; A, 1-1-2019]

16.61.24.14 RESIDENTIAL TENANCY AGREEMENTS: There shall be a signed written tenancy agreement for each property or rental unit. ~~[Tenancy agreements shall include, but not limited to, the following:~~

- ~~A. name of tenant;~~
- ~~B. property address or legal description including unit number (if unit number is applicable);~~
- ~~C. rent amount;~~
- ~~D. security deposit and other deposit amounts;~~
- ~~E. when and where rent is to be paid;~~
- ~~F. date possession began;~~
- ~~G. date possession ends;~~
- ~~H. all fees charged tenant; and~~
- ~~I. how payments are to be applied to outstanding charges.]~~

- A. Tenancy agreements shall include, but not be limited to, the following:
 - (1) name of tenant;
 - (2) property address or legal description including unit number (if unit number is applicable);
 - (3) rent amount;
 - (4) security deposit and other deposit amounts;
 - (5) when and where rent is to be paid;
 - (6) date property possession began;
 - (7) date property possession ends;
 - (8) all fees charged to the tenant; and
 - (9) how payments are to be applied to outstanding expenses/charges.

B. The qualifying broker shall include a copy, either in hard copy form or electronically, of the New Mexico Uniform Owner-Resident Relations Act, with every written residential tenancy agreement. The qualifying broker shall obtain separate written or electronic confirmation from each tenant that the tenant has received such copy of the act. The qualifying broker shall make this confirmation available to the commission if requested.

C. If the property manager's name is on a lease as the agent of the property owner, and a new property manager takes over management of the property, the lease shall be assigned to the new property manager. The owner of the property must give written consent for assignment of the lease and the assignment must be acknowledged in writing by the qualifying broker.

[16.61.24.14 NMAC - Rp, 16.61.24.14 NMAC, 1-1-2012; A, 1-1-2019]

16.61.24.16 [SHORT TERM AND] VACATION RENTALS: In addition to the provisions set forth above, the following special provisions apply only with respect to the management of ~~[short term and]~~ vacation rentals.

A. ~~[Management agreement to authorize collection of New Mexico gross receipts tax and lodger's tax from tenant. Broker to report and pay gross receipts tax and lodger's tax due on all receipts derived from reservations in accordance with New Mexico law.]~~ If gross receipts taxes and/or lodgers' taxes are due, the management agreement shall specify who or what entity is responsible for collection, reporting and/or remitting of such taxes. If the taxes are to be collected from the tenant by the broker or a third party, the management agreement shall authorize the broker or third party entity to collect and remit the applicable taxes from the renter.

B. Management agreements shall disclose if the broker is using a third party advertising or reservation service (such as AirBnB, VRBO, etc.)

C. Compensation retained by or paid to third parties who engage in advertising and/or taking reservations for vacation rental properties shall not be considered to be in violation of Subsection (3) of Section 61-

29-12 A NMSA 197 of the New Mexico real estate license law which prohibits real estate brokers from paying or receiving rebate, profit, compensation or commission to or from any unlicensed person.

D. If a broker uses an online travel agent or third party advertising entity which prohibits disclosure of the brokerage name and/or telephone number as registered with the commission, such displays are exempt from the disclosure requirement in Subsection B of 16.61.32.8 NMAC. In this event, the broker shall ensure that the renter receives this disclosure promptly upon completing a rental reservation.

E. The broker shall not be required to deliver a copy of the Uniform Owner-Resident Relations Act to a renter of a vacation rental.

~~[B.]~~ F. ~~[A-tenant]~~ A rental agreement shall also include the following:

- (1) arrival and departure dates;
- (2) check-in and check-out times;
- (3) nightly rental rate;
- (4) rental deposit;
- (5) security deposit;
- (6) disclosure of all fees charged to ~~[tenant]~~ the renter (e.g. cleaning, hot tub, phone, cable internet, resort, etc.);
- (7) accommodation rules (e.g. occupancy, parking, smoking, pets, noise, etc.); and
- (8) cancellation policy.

~~[C.]~~ G. Reports to owners. In the monthly statement to the owner, qualifying broker shall also list rental income, credit card fees, maintenance charges and amount paid in commission to the brokerage office.

~~[D.]~~ H. ~~[Tenant]~~ Renter security deposits. Funds collected as a tenant security deposit shall be deposited into the property management trust account.

~~[E.]~~ I. ~~[Tenant rental deposits].~~ Rental deposits. Funds collected ~~[as a tenant rental deposit]~~ as a rental deposit shall be deposited into the property management trust account to secure a reservation.

~~[F.]~~ J. Employees of the brokerage handling short term or vacation rentals or third parties who engage only in taking reservations for short term or vacation rentals shall not be required to be licensed.
[16.61.24.16 NMAC - Rp, 16.61.24.16 NMAC, 1-1-2012; A, 1-1-2019]

16.61.24.17 VENDORS

All brokers hiring vendors or employees to perform maintenance, repair or renovation activities shall only use vendors and employees who are:

A. certified and/or licensed as required by local, state and/or federal law; and,

B. insured and/or bonded.

[16.61.24.17 NMAC - N, 01-01-2019]