

# Real Estate Commission Rules

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## New Mexico Administrative Code

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### Title 16. OCCUPATIONAL AND PROFESSIONAL LICENSING

#### CHAPTER 61

#### REAL ESTATE BROKERS

##### PART 1

##### GENERAL PROVISIONS

###### 16.61.1.7. Definitions.

A. Acceptable financial institution: is a federally insured bank, savings and loan or title company authorized to do business in the state of New Mexico.

B. Agency: the fiduciary relationship created solely by the express written agency agreement between a person and a brokerage, authorizing the brokerage to act as agent for the person according to the scope of authority granted in that express written agreement for real estate services subject to the jurisdiction of the commission.

C. Agent: the brokerage authorized solely, by means of an express written agreement, to act as a fiduciary for a person and to provide real estate services that are subject to the jurisdiction of the commission; in the case of an associate broker, “agent” means the person who has been authorized to act by that associate broker’s qualifying broker. In the case of property management, the property manager is an agent of the owner(s) of the property for the purpose of performing the obligations of the owner under the property management agreement.

D. Approved education course: a commission approved 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, technical and ethical practice of real estate; and all state and federal laws including but not limited to fair housing, the Americans with Disabilities Act (ADA), and lead-based paint disclosure.

E. Approved training course: A commission approved course offering in personal and property protection for the broker and clients; offerings in using

the computer, the internet, business calculators, and other technologies to enhance the broker's service to the public; offerings concerning professional development, customer relations skills, sales promotion including salesmanship, negotiation, marketing techniques, servicing the client, or similar courses.

F. Associate broker: a person holding a New Mexico associate broker's license who is affiliated with a New Mexico qualifying broker.

G. Broker: any person holding a current New Mexico associate broker's or qualifying broker's real estate license.

H. Brokerage: a person, corporation, partnership or association qualified by a New Mexico licensed qualifying broker to conduct real estate brokerage activity in New Mexico.

I. Brokerage relationship: the relationship between a customer or client and a brokerage for the provision of services in connection with a real estate transaction.

J. Brokerage trust account: an account at an acceptable financial institution established by the qualifying broker for the purpose of holding money belonging to others received during a real estate sales transaction.

K. Broker duties: ~~the duties that brokers owe to their clients and customers in the course of a real estate transaction.~~ Certain duties owed by brokers to customers, clients, tenants, and other brokers.

L. Broker in charge: a New Mexico licensed real estate broker qualified to be a qualifying broker who has been designated in writing by the qualifying broker to assume responsibility for the brokerage during a period of time when supervision by the qualifying broker is not possible.

M. Client: a person who has entered into an express written agreement with a brokerage for real estate services subject to the jurisdiction of the commission.

N. Commercial real estate: real estate that is zoned for business or commercial use by a city or county; or by a city or county to allow five or more multifamily units; provided that all units are located on a single parcel of land with a single legal description.

O. Core Course: the four (4) hour Commission-approved continuing education course that all brokers are required to complete annually as a condition of license renewal.

P. Core Elective Course: the four (4) hour Commission-approved continuing education course in residential sales, commercial sales, property management, or vacant land/ranch sales required once during each three-year licensing cycle.

~~N.~~ Noncredit hours(s): credits toward education requirements as assigned by the real estate commission for each commission-approved course.

N. Custodial trust account: an account at an acceptable financial institution established by the qualifying broker for the purpose of holding money of an owner. The account shall be established in the owner's name with the qualifying broker as trustee. This account may be interest bearing.

O. Customer: a person who uses real estate services without entering into an express written agreement with a brokerage subject to the jurisdiction of the commission.

P. Designated agent: a broker who is designated in writing by their qualifying broker to represent a client of the brokerage as their exclusive agent in a real estate transaction.

Q. Designated agency: a policy chosen by the qualifying broker of a brokerage that discloses to a client of the brokerage that the broker representing them as an agent by means of an express written agency agreement is their only representative in the brokerage. The designated agency disclosure is

made at the time that the client and the brokerage enter into an express written agency agreement, or at such time that the qualifying broker of a brokerage determines the need to designate one broker of the brokerage as agent of the buyer and another as agent of the seller in the same transaction.

R. Distance education: distance learning is education and training that takes place outside of the traditional classroom setting and in which other instructional media are used because the instructor, teaching materials, and student are separated by either distance or time.

S. Dual agency: an express written agreement that modifies existing exclusive agency agreements to provide that the brokerage agrees to act as a facilitator in a real estate transaction rather than as an exclusive agent for either party to the transaction.

T. Dual agent: the brokerage in a dual agency relationship working as a facilitator in a single transaction for both a buyer client and a seller client who have modified existing exclusive agency agreements with the brokerage.

U. Employee: for the purposes of Section 61-29-2 C (1) of the real estate license law, a person employed by an owner of real property, or a person employed by the brokerage acting on behalf of the owner of real property. In determining whether a person is an employee, as opposed to an independent contractor, the commission shall consider the following:

(1) does the employer withhold income tax from the person's wages, salary, or commission;

(2) does the employer pay a portion of the person's FICA tax;

(3) is the person covered by workers' compensation insurance;

(4) does the employer make unemployment insurance contributions on behalf of the person.

V. Errors and omissions insurance: a type of professional liability insurance that provides insurance coverage to holders of active New Mexico real estate brokers licenses for errors and omissions made during the course of real estate transactions, subject to the coverages, limitations, and exclusions of the specific insurance policy or policies in place.

W. Exclusive agency: an express written agreement between a person and a brokerage wherein the brokerage agrees to exclusively represent as an agent the interests of the person in a real estate transaction. Such agreements include buyer agency, seller agency, designated agency, ~~and subagency agreements.~~ subagency and property management.

X. Expired license: an associate broker's or qualifying broker's license that has not been renewed as of the last day of the month following the broker's birth month at the end of the broker's three-year licensing cycle.

Y. Express written agreement: any written agreement signed by all parties pertaining to a real estate transaction or the provision of real estate services.

AA. Facilitator: the role of a brokerage in either a dual agency relationship or a transaction brokerage relationship in which the exclusive relationships between a seller or landlord client or buyer or tenant client are modified so that the brokerage impartially facilitates the transaction.

BB. Foreign Broker: A real estate broker who does not hold a real estate license issued by the New Mexico real estate commission, but who holds a current and valid real estate broker's license issued by another state in the United States, a province of Canada, or any other sovereign nation.

CC. Honesty and Reasonable Care and Ethical and Professional Conduct: conduct that a reasonable person would understand to meet standards of professionalism and ethical conduct within a profession, including but not limited to good faith, competence, trustworthiness, diligence, and lawful

behavior.

~~BB.~~ CC. Inactive broker: a New Mexico licensed real estate broker not currently affiliated with a New Mexico real estate brokerage and therefore ineligible to participate in any brokerage activity or collect fees or commissions in connection with such activity except as provided in Subsection C of 16.61.9.8 NMAC.

CC. In house transaction: a transaction that occurs under the supervision of one qualifying broker in the same brokerage.

DD. Land title trust account: a pooled interest-bearing account subject to the land title trust fund act.

~~EE. Mandatory course: the commission approved course required of all brokers, except exempt brokers, as a condition of license renewal.~~

FF. Military service member: a person, or the spouse of a person, who is serving in the armed forces of the United States or in an active reserve component of the armed forces of the United States, including the National Guard.

GG. Owner or Property Owner: a person who is recognized and held responsible by law as the owner of real property, including real property held by any legally recognized entity in which the owner has an interest of ten (10) percent or more.

HH. Party to the transaction: a client or customer or any other person who utilizes real estate related services subject to the jurisdiction of the commission, not including a person who acquires an interest as security for an obligation.

II. Person: any natural person, corporation, business trust, estate, trust, partnership, association, joint venture, governmental entity or other legal entity.

JJ. Post-licensing course: the commission-approved new broker business practices course required within the first year of licensure of brokers first licensed in New Mexico as associate brokers on or after January 1, 2009.

KK. Principal: any person who authorizes or employs another to do certain acts on behalf of that person.

LL. Property ledger: a record of deposits and disbursements within a trust account that is associated with the same property or owner.

MM. Property management: real estate services as specified by a management agreement which include, but are not limited to, the marketing, showing, renting and leasing of real property; the collection and disbursement of funds on behalf of owners; the supervision of employees and vendors; the coordination of maintenance and repairs; the management of tenant relations; or the preparation of leases or rental agreements, financial reports and other documents. In the course of listing and marketing properties for sale, inspections of the property, repairs and maintenance incident to the sale and authorized by the owner shall not be considered property management.

NN. Property management trust account: an account at an acceptable financial institution established by the qualifying broker for the purpose of holding money belonging to others received during the management of real property for others.

OO. Property manager: a broker who, for a fee, salary, commission or other valuable consideration, is engaged in managing property for others. The property manager is an agent of the owner(s) of the property for the purpose of performing the obligations of the owner under the Uniform Owner-Resident Relations Act and/or under the rental or lease agreement.

PP. Qualifying broker: a broker who has qualified a proprietorship, corporation, partnership or association to do business as a real estate

brokerage in the state of New Mexico, and who discharges the responsibilities of a qualifying broker as set forth in 16.61.16.9 NMAC.

QQ. Recent veteran: a person who has received an honorable discharge or separation from military service within the two years immediately preceding the date the person applied for a real estate broker's license.

RR. Reconciliation: the process by which the property ledgers within a trust account are balanced with the trust account and the trust account is balanced with the bank statement.

SS. Referral: the communication by one broker or brokerage to another broker or brokerage of the identity of a potential buyer/tenant or seller/lessor of real property available for sale, lease, rent or exchange.

TT. Responsible person: the qualifying broker or associate broker for whom an unlicensed assistant works. If an unlicensed assistant works for more than one broker, each broker for whom the unlicensed assistant works is a responsible person. Each responsible person will be subject to the provisions of Section 61-29-12A(7) NMSA 1978.

UU. Scope of authority: the range of authority granted by the principal to act on behalf of that principal.

VV. Short-term/vacation rental: with the exception of hotels and motels, the rental of real property for a period of 29 days or less.

WW. 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.

XX. Sponsor: an organization or entity approved by the real estate commission to offer courses approved by the real estate commission.

YY. Subagent: an agent of the agent, authorized to act for the agent in performing functions undertaken by the agent for his principal.

ZZ. Transaction: any real estate activity subject to the jurisdiction of the commission.

AAA. 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.

BBB. 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.

CCC. 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.

[16.61.1.7 NMAC - Rp, 16.61.1.7 NMAC, 1-1-2012; A 1-1-2014]

### **16.61.1.8. Offices.**

The offices of the New Mexico real estate commission will be located in Albuquerque, New Mexico.

[16.61.1.8 NMAC - Rp, 16.61.1.8 NMAC, 1-1-2012]

### **16.61.1.9. Telephonic meeting attendance.**

Commission members may participate in a meeting of the commission by means of a conference telephone or similar communications equipment and participation by telephone may only occur when it is difficult or impossible for commission members to attend a meeting of the commission, i.e. when circumstances beyond the member's control would make attendance in person

extremely burdensome.

[16.61.1.9 NMAC - Rp, 16.61.1.9 NMAC, 1-1-2012]

## **PART 2**

### **LICENSE AND OTHER FEES**

#### **16.61.2.7. Definitions.**

Refer to Definitions 16.61.1.7 NMAC.

[16.61.2.7 NMAC - Rp, 16 NMAC 61.2.7, 1-1-2002]

#### **16.61.2.8. Fees.**

A. For each examination, a fee not to exceed ninety-five dollars (\$95.00).

B. For each broker's license issued, and for each renewal thereof, a fee not to exceed two hundred seventy dollars (\$270.00).

C. For each license transferred, a fee not to exceed twenty dollars (\$20.00). If there are eleven or more affected licenses in the brokerage, the total transfer fee paid shall not exceed two hundred dollars (\$200.00).

D. For each duplicate license, where the license is lost or destroyed and affidavit is made thereof, a fee not to exceed twenty dollars (\$20.00).

E. For each license history, a fee not to exceed twenty-five dollars (\$25.00).

F. For copying of documents by the commission a fee not to exceed one dollar (\$1.00) per copy.

G. For each state of New Mexico real estate license law and rules manual a fee not to exceed ten dollars (\$10.00).

H. For each hard copy or electronic list of licensed real estate brokers, a fee not to exceed fifty dollars (\$50.00).

I. For each initial broker's license, and for the renewal thereof, a fee not to exceed ten dollars (\$10.00) shall be credited to the real estate recovery fund pursuant to NMSA 1978 Section 61-29-22 if in the commission's judgment the assessment of such fee is necessary to maintain the fund at its statutory minimum level.

J. For each application to the commission to become an approved sponsor of real estate pre-licensing and continuing education courses, a fee not to exceed five hundred dollars (\$500.00) and for each renewal thereof a fee not to exceed five hundred dollars (\$500.00).

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.

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).

[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]

#### **16.61.2.9. Fees non-refundable.**

Fees paid to the commission pursuant to 16.61.2.8 NMAC of the commission rules are non-refundable.

[16.61.2.9 NMAC - Rp, 16 NMAC 61.2.9, 1-1-2002; A, 01-01-2004; A, 1-1-2006]



### PART 3

## REAL ESTATE BROKER'S LICENSE: EXAMINATION AND LICENSING APPLICATION REQUIREMENTS

### 16.61.3.7. Definitions.

Refer to 16.61.1.7 NMAC.

[16.61.3.7 NMAC - Rp, 16.61.3.7 NMAC, 1-1-2012]

### 16.61.3.8. Types of licenses.

The New Mexico real estate commission issues two types of real estate broker's licenses; an associate broker's license and a qualifying broker's license. Both types of licenses are issued only to individuals. The requirements for obtaining both types of licenses are described below.

[16.61.3.8 NMAC - N, 1-1-2012]

### 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. Candidates who are licensed as associate brokers and are taking the broker's examination to upgrade to qualifying broker status 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 exempted 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 broker upgrading their license from associate broker to qualifying broker will also be exempted from taking the national portion of the broker's examination.

(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. 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 examination, unless they provide in writing to the commission a reasonable explanation for why they were unable to meet the 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. License application.

(1) Before being issued a qualifying broker's license, an applicant must document that their associate broker's or equivalent license has been on active status with a real estate brokerage for two of the last five years immediately preceding their application to become a qualifying broker, and must provide a certificate of completion of the commission-approved 30 hour brokerage office administration course. Applicants with current licenses who can document that they were New Mexico qualifying broker's 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.



(2) 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 associate broker's examination prior to being issued a qualifying broker's license.

(3) 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.

F. 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, 1-1-2014]

## **PART 4**

### **SALESPERSON'S LICENSE: EXAMINATION AND LICENSING APPLICATION REQUIREMENTS [REPEALED 01-01-06]**

## **PART 5**

### **ERRORS AND OMISSIONS INSURANCE**

#### **16.61.5.7. Definitions.**

Refer to 16.61.1.7 NMAC.

[16.61.5.7 NMAC - N, 1-1-2002]

#### **16.61.5.8. Group errors and omissions insurance policy.**

Effective January 1, 2002 every active New Mexico real estate broker shall have in effect a policy of errors and omissions insurance. The commission shall enter into a contract with a qualified insurance carrier or its agent or broker to



make available to all New Mexico real estate brokers and broker applicants a group policy of insurance under the following terms and conditions:

A. the insurance carrier is licensed and authorized by the New Mexico department of insurance to write policies of errors and omissions insurance in New Mexico;

B. the insurance carrier maintains an A.M. Best rating of “B” or better;

C. the insurance carrier will collect premiums, maintain records and report names of those insured and a record of claims to the commission on a timely basis and at no expense to the state;

D. the insurance carrier has been selected through a competitive bidding process;

E. the contract and policy are in conformance with Part 5 and all relevant New Mexico statutory requirements.

[16.61.5.8 NMAC - N, 1-1-2002; A, 1-1-2006]

### **16.61.5.9. Terms of coverage.**

The group policy shall provide, at a minimum, the following terms of coverage:

A. coverage of all acts for which a real estate license is required, except those illegal, fraudulent or other acts which are normally excluded from such coverage;

B. an annual premium not to exceed the amount set by statute 61-29-4.2B NMSA 1978;

C. that the coverage cannot be cancelled by the insurance carrier except for non-payment of the premium or in the event a broker becomes inactive or has their license revoked or an applicant is denied a license;

D. pro-ration of premiums for coverage which is purchased during the course of the calendar year but with no provision for refunds of unused premiums;

E. not less than \$100,000 coverage for each licensed individual and entity per covered claim regardless of the number of brokers or entities to which a settlement or claim may apply;

F. an aggregate limit of \$500,000 per licensed individual or entity;

G. a deductible amount for each ~~occurrence~~ claim of not more than \$1,000 per claim and no deductible for legal expenses and defense;

H. payment of claims by the provider shall be on a first dollar basis and the provider shall look to the insured for payment of any deductible.

I. the obligation of the insurance carrier to defend all covered claims with payment of defense costs outside of policy limits;

J. coverage of a broker’s use of lock boxes which may include a sublimit of not less than \$5,000 per claim for property damage or loss of use of property arising from a lock box claim;

K. the ability of a broker, upon payment of an additional premium, to obtain higher or excess coverage or to purchase additional coverage from the insurance provider as may be determined by the provider;

L. that coverage is individual and license specific and will cover the associate broker regardless of changes in qualifying broker;

M. an extended reporting period of not less than 365 days; an automatic 90-day extended reporting period with the ability of any insured broker, upon payment of an additional premium, to obtain an optional extended reporting period of one, two, or three years.

N. the ability of a broker, upon payment of an additional premium, to obtain a conformity endorsement allowing a New Mexico resident broker to meet errors and omissions insurance requirements for an active license in another group mandated state without the need to purchase separate

coverage in that state.

[16.61.5.9 NMAC - N, 1-1-2002; A, 1-1-2006; A, 12-31-2008]

### **16.61.5.10. Equivalent errors and omissions insurance policies**

New Mexico real estate associate broker or qualifying broker applicants may obtain errors and omissions coverage equivalent to the group plan from any insurance carrier subject to the following terms and conditions.

A. The insurance carrier is licensed and authorized by the New Mexico department of insurance to write policies of errors and omissions insurance in this state and is in conformance with all New Mexico statutes.

B. The insurance provider maintains an A.M. Best rating of "B" or better.

C. The policy, at a minimum, complies with all relevant conditions set forth in this rule and the insurance carrier so certifies in a certificate issued to the insured real estate broker or broker applicant in a form acceptable to the commission and agrees to immediately notify the commission of any cancellation or lapse in coverage. The commission will make no independent determination of whether equivalent policies meet the requirements of Part 5.

D. Coverage includes all acts for which a real estate license is required, except those illegal, fraudulent or other acts which are normally excluded from such coverage.

E. Coverage cannot be cancelled by the insurance provider except for nonpayment of premium or in the event a broker becomes inactive or the license is revoked, or in the event an applicant is denied a license.

F. Coverage is for not less than \$100,000 for each licensed individual and entity per covered claim and not less than a \$500,000 aggregate limit per licensed individual or entity.

G. A deductible amount for each ~~occurrence~~ claim of not more than \$1,000.

H. Payment of claims by the provider shall be on a first dollar basis and the provider shall look to the insured for payment of any deductible.

I. The obligation of the insurance carrier to defend all covered claims with payment of defense costs outside of policy limits.

J. Coverage of a broker's use of lock boxes which may include a sublimit of not less than \$5,000 per claim for property damage or loss of use of property arising from a lock box claim

K. An automatic 90-day extended reporting period with the ability of the broker, upon payment of an additional premium, to obtain an optional extended reporting period of one, two, or three years.

L. An extended reporting period of not less than 365 days. An automatic 90-day extended reporting period with an additional coverage period of not less than 365 days available upon payment of an additional premium.

M. Real estate brokers or broker applicants who obtain equivalent coverage and wish to be on active status must present to the commission the certificate referred to in 16.61.5.10 NMAC:

(1) when renewing an active license, no later than at the time of renewal;

or

(2) upon any request for reinstatement or activation of a license; or

(3) upon application for an active license.

[16.61.5.10 NMAC - N, 1-1-2002; A, 1-1-2006]

### **16.61.5.11. Broker compliance.**

Applicants for licensure, transfer, and renewal shall certify compliance with this rule by submitting along with the license, transfer, or renewal application a copy of a certificate from their insurance company certifying current

coverage. The commission will not issue an active license to a first time applicant who fails to provide proof of current coverage, and the license of any active New Mexico broker who fails to provide a certificate certifying current errors and omissions coverage will not be renewed or transferred until such certificate is received in the commission office.

[16.61.5.11 NMAC - N, 1-1-2002; A, 1-1-2006]

### **16.61.5.12. Insurance requirements suspended.**

The requirements of 16.61.5.8 NMAC shall be suspended if the commission through a competitive bidding and contract award process is not able to enter into a contract with a qualified insurance carrier to make available to all applicants for or holders of active New Mexico real estate broker's licenses a group policy of insurance under the terms and conditions described in Part 5.

[16.61.5.12 NMAC - N, 1-1-2002; A, 1-1-2006]

### **16.61.5.13. Penalties for violation.**

Brokers who fail to obtain and maintain an errors and omissions insurance policy as specified herein are guilty of violating NMSA 1978 Section 61-29-4.2 of the Real Estate License Law and are subject to license suspension and revocation as provided in Section 61-29-12 A (10).

[16.61.5.13 NMAC - N, 1-1-2006]

## **PART 6**

### **DESIGNATION OF A QUALIFYING BROKER TO QUALIFY A REAL ESTATE BROKERAGE**

#### **16.61.6.7. Definitions.**

Refer to 16.61.1.7 NMAC.

[16.61.6.7 NMAC - Rp, 16.61.6.7 NMAC, 1-1-2012]

#### **16.61.6.8. Requirements.**

- A. A corporation, partnership, association, proprietorship, limited liability company or any other business entity engaging in real estate brokerage in New Mexico, except as otherwise provided in 61-29-2 C NMSA 1978, must employ or enter into an independent contractor agreement with a qualifying broker(s) to qualify such entity to engage in real estate brokerage in the state.

Upon compliance with all requirements set out in the real estate license law and the real estate commission rules for licensure as a New Mexico qualifying broker, the commission shall issue a New Mexico qualifying broker's license to the applicant(s). Such license shall bear the name of the qualifying broker, the trade name of the brokerage that the qualifying broker has qualified to conduct brokerage business in the state and under which the brokerage will be conducting business and the address as registered with the commission from which the brokerage is conducting business.

- C. In the event a qualifying broker is unable for any reason to perform their qualifying broker duties, a corporate officer, family member or other responsible person, shall designate a broker in charge to conduct the brokerage business and supervise any other brokers affiliated with the

brokerage until such time as an individual files a trade name registration form with the commission designating that individual as the qualifying broker, or until the commission issues a qualifying broker's license to another individual.

[16.61.6.8 NMAC - Rp, 16.61.6.8 NMAC, 1-1-2012]

## PART 7

### FINGERPRINTING AND ARREST RECORD CHECKS

#### 16.61.7.7. Definitions.

Refer to 16.61.1.7 NMAC

[16.61.7.7 NMAC - Rp, 16.61.7.7 NMAC, 1-1-2012]

#### 16.61.7.8. Requirements.

A. All persons applying for or renewing a New Mexico real estate broker's license or upgrading an associate broker's license to a qualifying broker's license must be fingerprinted as a condition of licensure or license renewal.

B. Applicant fingerprints and processing fees are submitted electronically to the New Mexico department of public safety from approved live scan vendor sites for the purpose of matching applicant fingerprints with fingerprints in state and national arrest record databases. Applicants must register on the vendor web site prior to being fingerprinted. The vendor web site address and a list of approved live scan sites are available on the real estate commission web site at [www.rld.state.nm.us](http://www.rld.state.nm.us).

C. To verify compliance with the fingerprinting requirement, applicants for licensure or license renewal shall submit to the commission along with their license or renewal application a copy of the commission-approved fingerprint certification form completed by the vendor. To ensure that the commission is receiving the most current information available, fingerprinting ~~should~~ shall be done no earlier than ~~six months~~ twenty- one days prior to ~~applying for or renewing a license~~ submitting documents to apply for or renew a license.

D. License or license renewal applicants who do not have access to approved live scan vendor sites may be fingerprinted by other vendors using hardcopy fingerprint cards provided by the commission. Such applicants will be responsible for mailing the hardcopy cards and fees to vendor's headquarters at the address shown on the commission web site.

[16.61.7.8 NMAC - Rp, 16.61.7.8 NMAC, 1-1-2012; A, 1-1-2014]

## PART 8

### LICENSE TRANSFER

#### 16.61.8.7. Definitions.

Refer to Definitions 16.61.1.7 NMAC.

[1-1-2000; 16.61.8.7 NMAC - Rn, 16 NMAC 61.8.7, 1-1-2002]

#### 16.61.8.8. Requirements.

An associate broker may request that their license be transferred to a new qualifying broker. The transfer is effective on the date that the transfer fee,

transfer form, and the current license are received and stamped at the commission office. When associate broker requests that their license be transferred the qualifying broker or the broker in charge shall within 48 hours return the license to the commission. If a license transfer form is not accompanied by a certificate certifying that the associate broker or qualifying broker has current errors and omissions insurance coverage, the license will not be transferred until the certificate is received in the commission office.

A. When a qualifying broker returns his or her own license to the commission for transfer they shall within 48 hours either mail or deliver to the commission all licenses issued under that license. If the brokerage is to continue operation, an application from a new qualifying broker, along with transfer forms and appropriate fees for each license, shall also be included.

**B. RESERVED**

[8-15-97; 1-1-2000; 16.61.8.8 NMAC - Rn, 16 NMAC 61.8.8, 1-1-2002; A, 1-1-2006; A 1-1-2012]

## **PART 9**

### **LICENSE INACTIVATION AND REACTIVATION**

#### **16.61.9.7. Definitions.**

Refer to 16.61.1.7 NMAC.

[8-15-97; 16.61.9.7 NMAC - Rn, 16 NMAC 61.9.7, 1-1-2002; A, 1-1-2012]

#### **16.61.9.8. Requirements.**

A. When a broker requests that their license be placed on inactive status, the qualifying broker or broker in charge shall within 48 hours return the license to the commission. The license shall be inactivated and all real estate activity on the part of the broker shall cease.

B. When a qualifying broker returns their license to the commission for inactivation, they shall within 48 hours either mail or deliver to the commission all licenses issued under that license. If the brokerage is to continue operation, an application for a new qualifying broker, along with transfer applications and appropriate fees for each license, shall also be included.

C. Inactivation of a license shall take place at the time a license is received and stamped at the commission office. In the event that a license is lost, or otherwise unavailable for delivery by the qualifying broker to the commission office, inactivation of the license will take place at the time the commission receives and stamps a written notification from the qualifying broker that the associate broker is no longer affiliated with the brokerage. The qualifying broker may pay a commission to an associate broker whose license is on inactive status if the transaction was under contract while the broker was on active status. Payment of the commission is subject to the terms and conditions of the independent contractor agreement between the associate broker and the qualifying broker.

D. The voluntary inactivation of a license will not prevent the commission from taking disciplinary action against that license as provided in Section 61-29-1 through 61-29-29, NMSA, 1978.

E. Brokers whose licenses are inactive are required to fulfill the following requirements of licensure.

- (1) The payment of triennial renewal fees.

(2) Documentation of having been fingerprinted for purposes of matching with state and national arrest record databases.

(3) Completion of continuing education requirements.

(4) During the course of advertising personally owned property for sale, lease, or auction, disclosure that they are a licensed broker.

F. Brokers whose licenses are on inactive status are not required to have an errors and omissions insurance policy in effect while on inactive status. Inactive brokers are required to produce a certificate of current errors and omissions insurance as a condition of license activation.

G. If a license has been placed in inactive status and is not renewed at the time of next renewal, that license shall expire.

[8-15-97; 16.61.9.8 NMAC - Rn & A, 16 NMAC 61.9.8, 1-1-2002; A, 12-31-08; A, 1-1-2012]

## **PART 10**

**[RESERVED]**

## **PART 11**

### **LICENSE EXPIRATION AND RENEWAL**

#### **16.61.11.7. Definitions.**

Refer to 16.61.1.7 NMAC.

[1-1-2000; 16.61.11.7 NMAC - Rn, 16 NMAC 61.11.7, 1-1-2002]

#### **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. In addition to paying a reinstatement fee, the broker will be required as a condition of reinstatement to provide documentation of the completion of 30 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 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]

## **PART 12**

### **LICENSE SUSPENSION AND REVOCATION**

#### **16.61.12.7. Definitions.**

Refer to Definitions 16.61.1.7 NMAC.

[16.61.12.7 NMAC - Rp, 16 NMAC 61.12.7, 1-1-2002]

**16.61.12.8. Disciplinary actions.**

Violation of any provision of the real estate license law or commission rules may be cause for disciplinary action against any person who engages in the business or acts in the capacity of a real estate broker in New Mexico with or without a New Mexico real estate license, up to and including license suspension or revocation if the person is licensed in New Mexico, and other penalties as provided by law, commission rules, or policies, in the case of an unlicensed person. A person found by the commission to be engaging in unlicensed real estate activity has thereby submitted to the jurisdiction of the state and to the administrative jurisdiction of the commission and is subject to all penalties and remedies available for a violation of any provision of the real estate license law Chapter 61, Article 29 NMSA 1978 and the commission rules, Title 16 Chapter 61 NMAC. Nothing herein contained shall be deemed to be a restriction on any other penalty or provision provided by law.

[16.61.12.8 NMAC - Rp, 16 NMAC 61.12.8, 1-1-2002; A, 1-1-2006; A, 12-31-2008]

**16.61.12.9. License surrender.**

A. Any qualifying broker's or associate broker's license suspended or revoked by an order, stipulated agreement or settlement agreement approved by the commission shall be surrendered to the commission by the broker upon the delivery of the order to the broker by the commission, or on the effective date of the order.

B. All real-estate-related activity conducted under such license shall cease for the duration of the license suspension or revocation, and the license of any associate broker affiliated with a qualifying broker whose license is suspended or revoked shall be automatically placed on inactive status until a new qualifying broker or broker in charge is designated.

[16.61.12.9 NMAC - Rp, 16 NMAC 61.12.9, 1-1-2002; A, 1-1-2006; A, 1-1-2014]

**PART 13****CONTINUING EDUCATION REQUIREMENTS****16.61.13.7. Definitions.**

Refer to 16.61.1.7 NMAC.

[1-1-2000; 16.61.13.7 NMAC - Rn, 16 NMAC 61.13.7, 1-1-2002]

**16.61.13.8. Requirements.**

Except for brokers who were exempt from continuing education prior to July 1, 2011.

A. All active and inactive associate brokers and qualifying brokers shall successfully complete a minimum of thirty six (36) credit hours of continuing education in courses approved by the commission during each licensing cycle, including a Commission-approved four (4) hour ethics course.

~~B. All associate brokers and qualifying brokers shall successfully complete the approved eight (8) credit hour real estate commission mandatory course during each licensing cycle. the commission approved four (4) hour core course annually during each of the three years of the licensing cycle. Additionally, all associate brokers and qualifying brokers shall successfully complete a four (4) hour commission approved core~~

elective course once during each three-year licensing cycle. Of the remaining ~~twenty two (22)~~ ~~fourteen (14)~~ sixteen (16) credit hours, no more than ten (10) credit hours may be ~~credited~~ earned toward the continuing education requirement from approved training category courses. ~~At least twelve (12) credit hours must~~

~~be taken from approved education category courses; however, all twenty two (22) credit hours may be taken from the list of commission approved continuing education courses. All fourteen (14) sixteen (16) remaining credit hours may be earned toward the continuing education requirement from approved education category courses.~~

C. Commission approved pre-licensing courses may count for up to ten (10) credit hours toward continuing education credit for license renewal. The commission approved thirty (30) hour post-licensing course may also count for up to ten (10) education category credit hours toward continuing education.

D. No commission approved continuing education course in either the education or the training category will be granted more than ten (10) credit hours of continuing education credit.

E. Continuing education credit hours cannot be carried forward to the next licensing cycle.

F. The same continuing education course cannot be repeated for credit in a three-year renewal cycle.

G. Brokers may receive up to a maximum of four (4) approved education course credit hours during each licensing cycle for attending commission meetings, or rule hearings, or disciplinary hearings, or meetings of the Education Steering Advisory Committee.

H. Approved instructors may use up to ten (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.

I. Classes required by the commission for disciplinary reasons cannot be counted towards the continuing education requirements for license renewal.

[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]

### **16.61.13.9. Verification of completion of course work.**

At the time of license renewal, associate brokers and qualifying brokers shall submit to the real estate commission verification of completion of continuing education course work.

[1-1-2000; 16.61.13.9 NMAC - Rn, 16 NMAC 61.13.9, 1-1-2002; A, 1-1-2006; A, 12-31-2008; A, 1-1-2012]

## **PART 14**

### **EDUCATION AND TRAINING FUND**

#### **16.61.14.7. Definitions.**

Refer to 16.61.1.7 NMAC.  
[16.61.14.7 NMAC - N, 01/01/07]

#### **16.61.14.8. Providers.**

The New Mexico real estate commission may enter into contracts with public or private institutions or individuals to establish, continue, or expand educational programs or research programs which will benefit real estate brokers and the public in its potential dealings with real estate brokers.

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Priority will be given to those programs that enhance educational opportunities for New

Mexico-licensed real estate associate brokers and qualifying brokers, and further the real estate commission's mission of protecting the public and increasing the professional competence of real estate brokers.

[16.61.14.8 NMAC - N, 01/01/07]

#### **16.61.14.9. Amounts and terms of contracts for education or research.**

The amount to be paid and the duration of any contract shall be as provided for in each contract. Any amendment to a contract to increase the payment or extend the time of performance shall be at the discretion of the commission. No provision of any contract shall be construed as obligating the commission to make any payment beyond the fiscal year in which the commission enters into the contract, unless otherwise provided for in the contract.

[16.61.14.9 NMAC - N, 01/01/07]

#### **16.61.14.10. Proposals.**

Proposals to enter into contracts for education or research with the commission will be required to contain the following:

A. a statement of the educational objective of the proposed program or research;

B. a statement of how the program will benefit associate brokers or qualifying brokers or the public who may deal with them;

C. if applicable, a detailed course outline, the number of educational hours in the program, length of course, schedule of instruction, location, and anticipated number of participants;

D. if applicable, the purpose, scope, length, and place of research work;

E. a detailed cost analysis of the entire course or project including, but not limited to such items as source(s) of other funding for the program, cost of advertising, administration, instructors, materials, and physical facilities, and fees proposed to be charged to participants;

F. if applicable, a list of instructors who may be used and their credentials;

G. any academic, real estate, or other professional credit proposed to be awarded, subject to the approval of the commission;

H. such other information as the commission may require at the time of submission of the proposal or after reviewing the proposal.

[16.61.14.10 NMAC - N, 01/01/07]

#### **16.61.14.11. Commission action on proposals.**

A. The commission shall act on all proposals within sixty (60) days of receipt of a written original or amended proposal and shall notify the applicant in writing of:

(1) the terms of acceptance of the proposal;

(2) the reason or reasons for rejection of the proposal;

(3) any further information needed to accept or reject the proposal;

B. Decisions of acceptance and rejection by the commission shall be final.

[16.61.14.11 NMAC - N, 01/01/07]

**16.61.14.12. Reports.**

Within thirty (30) days of the end of the term of the contract or at such other time as the commission may require, the provider under contract shall provide to the commission a report of the expenditure of funds under the contract, and a written report explaining how the program benefited New Mexico real estate brokers and consumers. Whenever a contract for education or research requires that the provider conduct courses, seminars, or other educational venues, the provider shall issue to each participant who successfully completes the program a certificate of course completion that includes the participant's name, the course name, the number of approved credit hours, and whether the course is in the education or training category of approved commission courses. Within fourteen (14) days of the end of the program, the provider shall send to the commission a list of all real estate brokers who successfully completed the program. The commission may direct its employees or representatives to monitor any contracted program at any time and the providers shall be required to supply to such representatives requested reasonable data upon reasonable notice.

[16.61.14.12 NMAC - N, 01/01/07]

**16.61.14.13. Use of commission name.**

Any advertising of a program or project funded by the education and training fund must indicate that the New Mexico real estate commission underwrites a portion or all of the cost of the program. Any publication or any other educational materials produced as a result of a contract must include indication that the New Mexico real estate commission underwrites a portion or all of the cost of producing the material. All participants in any program underwritten totally or in part by the New Mexico real estate commission must be clearly and affirmatively made aware of the participation of the New Mexico real estate commission and how they may forward comments on the program to the commission. No other use of the name of the commission shall be permitted without the commission's prior approval.

[16.61.14.13 NMAC - N, 01/01/07]

**16.61.14.14. Product of service — Copyright.**

All materials developed or acquired by a Contractor providing educational and research services funded in whole or in part by the Education and Training Fund shall become the property of the New Mexico real estate commission and shall be delivered to the Commission no later than the termination date of the contract. Nothing produced, in whole or in part, by the Contractor shall be the subject of an application for copyright other claim of ownership by or on behalf of the Contractor.

[16.61.14.14 NMAC - N, 01/01/07]

**16.61.14.15. Changes.**

No substantive changes, including schedule of programs, may be made in a program under a contract for education and research without the prior approval of the commission. The commission at a regularly scheduled meeting

may make emergency changes on a temporary basis with the prior approval of the administrator of the commission subject to review and final approval. All requests for changes and authorizations of changes must be made in writing before they may be implemented.

[16.61.14.15 NMAC - N, 01/01/07]

#### **16.61.14.16. Participants.**

Any courses offered to New Mexico licensed associate brokers and qualifying brokers which the commission has underwritten in part or in total must be made available to all persons regardless of race, color, religion, sex, handicap, familial status, national origin, age, or membership in any organization.

[16.61.14.16 NMAC - N, 01/01/07]

#### **16.61.14.17. Expenditures.**

Any funds not expended in the implementation of a contract for education or research shall revert to the Education and Training Fund.

[16.61.14.17 NMAC - N, 01/01/07; A, 12-31-2008]

#### **16.61.14.18. Revenues.**

The Real Estate Education and Training Fund shall consist of an initial transfer of the balance in the Real Estate Recovery Fund in excess of the \$150,000 statutory minimum balance; legislative appropriations to the fund; fees charged by the commission for approval of real estate education sponsors, courses, and instructors; gifts, grants, donations, and bequests to the fund; and income from investment of the fund. Money in the fund shall not revert to any other fund at the end of a fiscal year.

[16.61.14.18 NMAC - N, 01/01/07; A, 1-1-2014]

#### **16.61.14.19. Violations.**

Any violation of the provisions of this part, any falsification or misrepresentation in a proposal for a contract for education and research, or violation of any written agreement entered into with the commission under this part may result in a termination of the contract and the requirement that all funds paid by the commission be returned. Any provider under a contract for education and research found to have not properly accounted for or improperly expended all funds shall repay said funds plus interest at 6 percent per annum to the commission and said recipient shall be ineligible to enter into any contract for education and research with the commission until said recipient first repays the fund plus interest. Should the commission allege any violation under this rule, it shall provide the respondent with a formal hearing under the provisions of the Uniform Licensing Act.

[16.61.14.19 NMAC - N, 01/01/07; A, 12-31-2008]



## PART 15

### APPROVAL OF REAL ESTATE COURSES, SPONSORS, AND INSTRUCTORS

#### 16.61.15.7. Definitions.

Refer to 16.61.1.7 NMAC.

[16.61.15.7 NMAC - Rp, 16.61.15.7 NMAC, 1-1-2012]

#### 16.61.15.8. Education Advisory Committee.

The commission shall appoint an education ~~steering~~ advisory committee (~~EAC~~) (EAC) 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.

A. The committee shall meet monthly or as required for the purpose of ~~certification reviews of~~ evaluating applications for real estate course sponsors, sponsorship, new courses, and new 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 ~~at least~~ nine voting members appointed by the commission and no fewer than three non-voting instructor/advisory members. The chair and vice chair shall be appointed from among the voting members. Each member shall serve a term of three years or until their successors are appointed. The commission may remove a member for cause. 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. Members shall serve a maximum of two three-year 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, 1-1-2012]

#### 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.

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 EAC 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, and competent.

[16.61.15.9 NMAC - Rp, 16.61.15.9 NMAC, 1-1-2012]

### **16.61.15.10. Approval of sponsors and sponsor 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 90% 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 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]

### **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 when relevant. A course application form must be completed and submitted to the commission before consideration of a course for approval by the Education Advisory Committee (EAC).

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

(2) The EAC 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 EAC may waive an EAC course presentation appearance by a nationally recognized professional real estate organization that provides professional designations if the organization can document to the EAC'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 is offered.

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

(2) Approved sponsors are limited to four 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 EAC according to presentation criteria established by the EAC.

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 EAC 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 EAC and shall submit for EAC review and approval:

(1) a 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 EAC 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.

[16.61.15.11 NMAC - Rp, 16.61.15.11 NMAC, 1-1-2012]

### **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.

(1) Be honest, truthful, reputable and competent.

(2) Submit a commission-approved application before presenting the course to the EAC.

(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~~ 30 minute presentation to the EAC 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 years' experience as a qualifying broker in New Mexico or another licensing jurisdiction.

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

~~(1) be a currently approved instructor for real estate law and real estate principles and practice or be currently approved to teach three or more continuing education courses; complete a core course training and be approved by the Education Advisory Committee (EAC).~~

(2) ensure the ~~mandatory core~~ core course materials they present include the most recent updates provided by the New Mexico real estate commission; and

~~(3) make a minimum 60-minute presentation to the EAC. and answer questions.~~

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 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 EAC and answer questions.

F. EAC approval process. The EAC 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 EAC may ask the commission to review the EAC'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 EAC 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, 1-1-2012]

## PART 16

### QUALIFYING BROKER: AFFILIATION AND RESPONSIBILITIES

#### 16.61.16.7. Definitions.

Refer to 16.61.1.7 NMAC.

[16.61.16.7 NMAC - Rp, 16.61.16.7 NMAC, 1-1-2012]

#### 16.61.16.8. Affiliation.

A qualifying broker is responsible for all real estate activities within the brokerage. A qualifying broker may serve concurrently as a qualifying broker for more than one brokerage. A qualifying broker may by written agreement engage the services of associate brokers and qualifying brokers, provided that the terms of such agreements are consistent with the responsibilities of associate brokers and qualifying brokers as set forth in parts 16.61.16.9 NMAC and 16.61.17.9 NMAC. A qualifying broker may serve as qualifying broker and associate broker for different brokerages simultaneously provided that there are written agreements executed specifying the responsibilities and scope of authority that the broker has for each brokerage.

[16.61.16.8 NMAC - Rp, 16.61.16.8 NMAC, 1-1-2012]

#### 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 home page of 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 in hard copy or electronic format.

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 including but not limited to advertising of real estate or real estate services conducted on behalf of others by employees, brokerage owners who are not qualifying brokers, associate brokers, and qualifying brokers affiliated with the brokerage.~~

~~F. Execute and maintain current written employment or independent contractor agreements with brokers and employees affiliated with the brokerage, and with brokerage owners who are not qualifying brokers.~~

E. Supervise all real estate activities performed by the brokerage on behalf of others, including but not limited to advertising of real estate and real estate services by associate brokers, qualifying brokers, and employees; and trust account management by brokerage owners whether or not they are licensed real estate brokers.

F. Execute and maintain current written employment or independent contractor agreements with all persons affiliated with the brokerage, including brokers,

brokerage employees, and brokerage owners whether or not the brokerage owners are licensed real estate brokers.,

G. maintain full and complete records wherein the qualifying broker and affiliated associate broker(s) are engaged on behalf of others, or on their own behalf, in real estate related matters processed through the brokerage; 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 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;

H. deposit all money received on behalf of others in the proper trust account as soon after receipt as is practicably 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 sub-part;

J. ensure that when the brokerage cooperates with or makes a referral to, or receives a referral from any broker, 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 NMSA 1978 Section 61-29-4.2 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 ~~four~~ six hour qualifying broker refresher course;

O. ensure that associate brokers affiliated with their brokerage complete the commission-approved new broker business practice course within their first year of licensure.

O. ensure that the qualifying broker's name and contact information is clearly and conspicuously displayed on any express written agreement entered into between the brokerage and its customers and clients.

[16.61.16.9 NMAC - Rp, 16.61.16.9 NMAC, 1-1-2012; A, 1-1-2014]

## **ASSOCIATE BROKER: AFFILIATION AND RESPONSIBILITIES**

### **16.61.17.7. Definitions.**

Refer to 16.61.1.7 NMAC.

[1-1-2000; 16.61.17.7 NMAC - Rn, 16 NMAC 61.17.7, 1-1-2002]

**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.

[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]

**16.61.17.9. Responsibilities.**

All active associate brokers shall complete the commission-approved new broker business practices course in their first year of licensure. Associate brokers who have remained inactive from date of licensure shall complete the course within the first year after their license is activated.

An active associate broker shall:

- A. be affiliated with only one qualifying broker at a time;
- B. not engage in any real estate activity for any other qualifying broker other than the qualifying broker with whom the broker is affiliated;
- C. not engage in any real estate activities for others for which a real estate license is required outside the knowledge and supervision of their qualifying broker;
- D. not engage in any real estate activities on their own behalf outside the knowledge of the qualifying broker with whom the broker is affiliated;
- E. not engage in any real estate activity under a trade name(s) other than the trade name(s) of the qualifying broker with whom the broker is affiliated;
- F. not receive any commissions or fees for real estate activities from anyone other than the qualifying broker with whom the broker was affiliated with at the time the transaction went under contract, or persons authorized in writing by the qualifying broker to disburse such commissions or fees;
- G. when advertising real estate or real estate services for others, include in the advertising the trade name and telephone number as registered with the commission of the qualifying broker with whom the broker is affiliated;
- H. remit all funds received from others related to real estate transactions to the qualifying broker or their designee as soon as possible after receipt of those funds, and after securing signatures of all parties to the transaction;
- I. deliver in a timely manner to their qualifying broker all records required to be maintained by their qualifying broker under 16.61.16 NMAC.
- J. maintain a current errors and omissions insurance policy as provided in NMSA 1978 Section 61-29-4.2 of the Real Estate License Law and part 16.61.5.8 of the commission rules, and provide documentation of such policy to their qualifying broker.

[1-1-2000, A, 2-14-2000; 16.61.17.9 NMAC - Rn, 16 NMAC 61.17.9, 1-1-2002; A, 1-1-2006; A, 12-31-2008; A, 1-1-2012; A, 1-1-2014]



## PART 18

### SALESPERSONS: AFFILIATION AND RESPONSIBILITIES [REPEALED 01-01-06]

## PART 19

### BROKER DUTIES AND BROKERAGE RELATIONSHIPS

#### 16.61.19.7. Definitions.

Refer to 16.61.1.7 NMAC.

[16.61.19.7 NMAC - Rp, 16.61.19.7 NMAC, 1-1-2004]

#### 16.61.19.8. Broker duties; disclosure.

~~Before the time a broker generates or presents any written document that has the potential to become an express written agreement, the broker shall disclose in writing to their prospective customer or client, and obtain a written acknowledgement from their prospective customer or client, showing the delivery of the disclosure of the following broker duties:~~

Prior to the time a broker generates or presents to their prospective customer or client any written document that has the potential to become an express written agreement the broker shall disclose in writing to that customer or client the list of broker duties set forth in Part 16.61.9.9. that are owed by brokers to customers, clients, tenants, and other brokers. The broker shall obtain from their prospective customer or client written acknowledgement that the broker has made such disclosure.

#### 16.61.19.9. Broker duties

Brokers owe the following duties to their customers and clients:

- A. Honesty, reasonable care, and ethical and professional conduct as set forth in the provisions of this section;
- 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 customer or client;
- D. assistance to the broker's customer or client in completing the transaction, unless otherwise agreed to in writing by the customer or client, including:
  - (1) timely presentation of and response to all offers or counter-offers
  - (2) active participation in assisting their customer or client in complying with the terms and conditions of the contract and with the closing of the transaction; if the broker in the transaction is not providing the service, advice or assistance described in Paragraphs (1) and (2) of Subsection D of 16.61.19.8 NMAC, the customer or client must agree in writing that the broker is not expected to provide such service, advice or

assistance, and the broker shall disclose the existence of such agreement in writing to the other brokers involved in the transaction;

E. acknowledgement by the broker that there may be matters related to the transaction that are outside the associate broker's or qualifying broker's knowledge or expertise and that the associate broker or qualifying broker will suggest that the customer or client seek expert advice on these matters;

F. advice to clients and customers to consult with an attorney regarding the effectiveness, validity, or consequences of any express written agreement entered into with a brokerage.

G. prompt accounting for all money or property received by the broker;

H. written disclosure to their client or customer and to other brokers involved in the transaction of any potential conflict of interest that the broker has in the transaction including but not limited to:

(1) any written brokerage relationship the broker has with any other parties to the transaction or;

(2) any material interest or relationship of a business, personal, or family nature that the broker has in the transaction;

~~(3) other brokerage relationship options available in New Mexico;~~

I. 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;

I. written disclosure of brokerage relationship options available in New Mexico;

Maintenance of any confidential information learned in the course of any prior agency relationship unless the disclosure is with the former client's consent or is required by law;

K. unless otherwise authorized in writing, an associate broker or qualifying broker shall not disclose to their customer or client during the transaction that their seller client or customer has previously indicated they will accept a sales price less than the asking or listed price of a property; that their buyer client or customer has previously indicated they will pay a price greater than the price submitted in a written offer; the motivation of their client or customer for selling or buying property; that their seller client or customer or their buyer client or customer will agree to financing terms other than those offered; or any other information requested in writing by the associate broker's or the qualifying broker's customer or client to remain confidential, unless disclosure is required by law.

[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]

Brokers owe the following duties to tenants:

- A. honesty, 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 resident relations act, and other applicable local, state, and federal laws and regulations.
- C. Performance of any and all written agreements entered into with the tenant
- D. Prompt accounting for all money or property received by the broker from the tenant, including issuance of a receipt for cash received

- E. Written disclosure that the broker is the agent of the owner of the property and not of the tenant.
- F. 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 do not include any information covered by federal fair housing laws or the New Mexico Human Rights Act.
- G. Advice to tenants to consult an attorney regarding the effectiveness, validity, or consequences of any express written agreement the tenant is required to sign.

Brokers owe the following duties to other brokers:

- A. Honesty, reasonable care, and ethical and professional conduct
- B. timely presentation of and response to all offers or counter-offers
  - (1) active participation in assisting their customer or client in complying with the terms and conditions of the contract and with the closing of the transaction; if a broker in the transaction is not providing the service, advice or assistance described in Paragraphs (1) and (2) of Subsection D of 16.61.19.8 NMAC, the customer or client must agree in writing that the broker is not expected to provide such service, advice or assistance, and the broker shall disclose the existence of such agreement in writing to the other brokers involved in the transaction;
- C. 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 resident relations act, and other applicable local, state, and federal laws and regulations.
- D. 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;
  - Rewritten disclosure to their client or customer and to other brokers involved in the transaction of any potential conflict of interest that the broker has in the transaction including but not limited to:
    - any written brokerage relationship the broker has with any other parties to the transaction or;
    - (1) any material interest or relationship of a business, personal, or family nature that the broker has in the transaction;
- E. Non-interference with a purchase agreement or any express written agreement that another broker has with their client or customer.

### **16.61.19.13 Brokerage relationships.**

Brokerages working with consumers either as customers or clients may do so through a variety of brokerage relationships. These relationships include but are not limited to a transaction broker relationship, an exclusive agency relationship or a dual agency relationship. For all regulated real estate transactions, a customer or client may enter into an express written agreement to become a client of a brokerage without creating an agency relationship, and no agency duties will be imposed.

I. 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.

J. Exclusive agency: an express written agreement between a person and a brokerage wherein the brokerage agrees to exclusively represent as an agent

the interests of the person in a real estate transaction. Such agreements include buyer agency, seller agency, designated agency, ~~and subagency agreements.~~ subagency and property management.

K. Dual agency: an express written agreement that modifies existing exclusive agency agreements to provide that the brokerage agrees to act as a facilitator in a real estate transaction rather than as an exclusive agent for either party to the transaction.

[16.61.19.9 NMAC - Rp, 16.61.19.9 NMAC, 1-1-2004; A, 12-31-2008; A, 1-1-2012]

### **16.61.19.13 Dual agency relationship.**

L. Dual agency occurs when:

(1) an associate broker or qualifying broker is agent for both a seller client and a buyer client in the same transaction;

(2) an associate broker is agent for either a seller client or a buyer client, and the agent's qualifying broker is agent for the other client in the transaction; and,

(3) in a transaction where a buyer client and a seller client are each served by different associate brokers in an agency relationship supervised by the same qualifying broker, and the qualifying broker does not choose the designated agency option, both the associate brokers and the qualifying broker are dual agents in the transaction.

M. In all situations, a dual agent shall act in the capacity of a facilitator rather than as an exclusive agent of either party to the transaction.

N. Prior to writing or presenting offers, a dual agent shall obtain written authority from the buyer client and the seller client in the form of a separate dual agency agreement.

O. Information obtained by an associate broker or qualifying broker prior to the time that written authority for dual agency was granted shall not be disclosed to the other party unless required by law or rules or permitted by the client who originally disclosed the confidential information.

[16.61.19.10 NMAC - Rp, 16.61.19.11 NMAC, 1-1-2004; A, 1-1-2006]

## **PART 20**

**[RESERVED]**

## **PART 21**

### **UNLICENSED ASSISTANTS**

#### **16.61.21.7. Definitions.**

Refer to 16.61.1.7.

[8-15-97, 12-15-99; 16.61.21.7 NMAC - Rn, 16 NMAC 61.21.7, 1-1-2002]

#### **16.61.21.8. Permitted activities.**

An unlicensed assistant is permitted to engage in the following activities:

A. obtaining information pursuant to written instructions from the responsible person from public records, a multiple listing service, listing exchange or from third party sources including, but not limited to, surveyors, banks, appraisers and title companies;

B. hosting and/or distributing literature at an open house under the

following conditions:

(1) an unlicensed assistant does not discuss, negotiate or solicit offers for the property or provide any information other than printed material prepared and approved by the responsible person; and

(2) the responsible person is present at the open house where the unlicensed assistant is located;

(3) all inquiries are referred to the responsible person or other associate brokers or qualifying brokers;

C. disseminating and distributing information prepared and approved by the responsible person;

D. picking up and delivering paperwork to associate brokers or qualifying brokers other than the responsible person;

E. picking up and delivering paperwork to sellers or purchasers after a contract has been executed if the paperwork has already been reviewed and approved by the responsible person, without answering any questions or providing any opinions or advice to the recipient of the paperwork. All substantive questions must be referred to the responsible person;

F. writing advertisements, flyers, brochures, and other promotional materials for the approval of the responsible person, and placing classified advertisements approved by the responsible person;

G. placing or removing signs on real property as directed by the responsible person;

H. ordering repairs as directed by the responsible person;

I. receiving and depositing funds, maintaining books and records, while under the supervision of the responsible person;

J. typing or word processing documents, including purchase and listing agreements, prepared by the responsible person.

[Rn, 16.61.21.8.9, 1-1-2000, A, 1-1-2000; 16.61.21.8 NMAC - Rn, 16 NMAC 61.21.8, 1-1-2002; A, 1-1-2006]

### **16.61.21.9. Prohibited activities.**

An unlicensed assistant is not permitted to engage in the following activities in connection with the purchase, sale or exchange of real property:

A. preparing legal documents such as listing and sales contracts;

B. interpreting documents, offering opinions or advice;

C. disseminating and distributing information, unless the information is in writing and is prepared and approved by the responsible person;

D. obtaining personal or property information from a client or customer of the responsible person except when acting as a coordinator directed by the responsible person by gathering and following up on information and the status of matters pertaining to the transaction after a contract has been executed;

E. picking up from or delivering to customers or clients financial documents prepared by title companies, lenders or other third persons for the purpose of obtaining signatures;

F. attending a closing without the responsible person present;

G. representing himself or herself as being an associate broker or a qualifying broker or as being engaged in the business of buying, selling, exchanging, renting, leasing, managing, auctioning or dealing with options on any real estate or the improvements thereon for others;

H. telephone solicitation of any kind designed to procure transactions requiring licensure under Section 61-29-1 et. Seq. NMSA 1978, including, but

not limited to, procuring buyers, sellers, listings or appointments for listing presentations.

[8-15-97; 16.61.21.9 NMAC - Rn & A, 16 NMAC 61.21.9, 1-1-2002; A, 1-1-2006]

#### **16.61.21.10. Disability.**

Notwithstanding the foregoing, if an associate broker or qualifying broker is a person with a disability as defined in the Americans with Disabilities Act or regulations promulgated hereunder, an unlicensed assistant may provide such additional services normally requiring a license to or on behalf of the associate broker or qualifying broker as would constitute a reasonable accommodation so long as the unlicensed assistant is under the direct control of the associate broker or qualifying broker, the associate broker or qualifying broker is as close as is practical to the activity, and the unlicensed assistant is not represented as being or having the authority to act as an associate broker or qualifying broker. The associate broker or qualifying broker shall notify the commission of the identity of all unlicensed assistants who perform services normally requiring a license for the associate broker or qualifying broker pursuant to this rule prior to performance of these services.

[8-15-97, A, 1-1-2000; 16.61.21.10 NMAC - Rn, 16 NMAC 61.21.10, 1-1-2002; A, 1-1-2006]

#### **16.61.21.11. Penalties.**

Unlicensed assistants are subject to the penalties of Section 61-29-17 and 61-29-17.2 NMSA 1978.

[8-15-97, A, 1-1-2000; 16.61.21.11 NMAC - Rn & A, 16 NMAC 61.21.11, 1-1-2002]

## **PART 22**

**[RESERVED]**

## **PART 23**

### **TRUST ACCOUNTS**

#### **16.61.23.7. Definitions.**

Refer to 16.61.1.7 NMAC.

[16.61.23.7 NMAC - Rp, 16.61.23.7 NMAC, 1-1-2012]

#### **16.61.23.8. Decryption, designation and reconciliation.**

- A. Funds of others. A qualifying broker who receives money belonging to others related to a real estate transaction shall deposit same only in a trust account in an acceptable financial institution, title company or with a qualifying broker also involved in the transaction.

B. Designation. All trust accounts shall be designated on the institution's records as "trust account" and include the trade name of the brokerage as registered with the commission.

C. Electronic transactions. Online payments, direct deposits and other electronic transactions are permitted as long as each transaction can be tracked on the bank statement and on the property ledger.

~~D. Reconciliation. Trust accounts must be reconciled monthly and verified by the qualifying broker.~~

D. Reconciliation- As defined in Part 16.61.1.7 RR of the Commission Rules, reconciliation must be performed monthly and verified by the qualifying broker.

E. Property ledgers. Each trust account transaction shall be assigned to a managed property (e.g. single family home, apartment complex or commercial property).

F. Number of trust accounts. A brokerage may have more than one trust account.

G. The qualifying broker must have access to all trust accounts and all financial records related to the brokerage's trust accounts.

[16.61.23.8 NMAC - Rp, 16.61.23.8 NMAC, 1-1-2012]

### **16.61.23.12 Types of trust accounts.**

A qualifying broker shall have only the following types of accounts and they shall be used only for the purposes stated.

H. Brokerage trust account. This account shall be used for money belonging to others related to a real estate sales transaction. Property management funds may not be placed in this trust account. In lieu of a brokerage trust account, a broker may deposit funds with a title company authorized to do business in the state of New Mexico. If a title company is used in lieu of a brokerage trust account, then receipt and deposit records shall be kept as outlined in this section.

I. Property management trust account. This account shall be used for money belonging to others received by a qualifying broker related to managing properties for others. All management commissions and fees may be deposited, withdrawn and tracked through the property management trust account as long as those commissions and fees are specified in the management agreement.

J. Special trust account. In the event the principals agree in writing that an interest bearing special trust account is to be established, a written agreement shall be prepared stating as a minimum the following:

- (1) the qualifying broker shall be named as sole trustee;
- (2) name of the acceptable financial institution wherein the funds are to be deposited;
- (3) the amount of interest to be paid on the funds and to whom the interest shall accrue;
- (4) the final disposition of principal and interest upon closing, termination or default by either party to the transaction; and
- (5) the signatures of all parties to the transaction and the qualifying broker as trustee.

K. Custodial account. Funds designated to be deposited in a custodial account shall first be placed in a brokerage trust account or a property management trust account of the qualifying broker and then may be transferred to the custodial account of the owner. Custodial accounts shall not contain any funds other than those belonging to the owner of the custodial account. Custodial accounts may be interest bearing; however, the interest

shall be paid only to the owner or his designee. The qualifying broker shall have on file a written agreement signed by all principals as to the establishment and operational details of each custodial account.

[16.61.23.9 NMAC - Rp, 16.61.23.8 & 9 NMAC, 1-1-2012]

### **16.61.24.15 Record accessibility, retention and inspection.**

Every qualifying broker shall keep bank and office records of all funds related to all trust accounts, as set forth below.

L. Accessibility. Records shall be maintained at or accessible from the brokerage office as registered with the commission.

M. Retention. All trust account records shall be retained for six years after the completion of a transaction.

N. Property management. All property management trust account records shall be retained for the full term of any agreement and for six years from the termination of the management agreement.

O. Inspection. All financial documents shall be subject to inspection by the commission or its duly authorized representative at the designated location of such records or at the offices of the commission. The records shall include, at a minimum, clear indication of all funds received and disbursed on behalf of others in all real estate transactions wherein the qualifying broker is involved.

P. The qualifying broker is responsible for the maintenance and safekeeping of all trust account records.

[16.61.23.10 NMAC - Rp, 16.61.23.9 NMAC, 1-1-2012]

### **16.61.21.12. Deposits, disbursements and commingling.**

A. Deposits. All trust account deposits shall conform to the following requirements.

(1) Timeliness. All funds of others pertaining to a real estate transaction shall be deposited into the proper trust account per written agreement of the parties to the transaction.

(2) Receipt records. A detailed record of all funds received shall be maintained by the qualifying broker and shall clearly indicate the following:

- date received;
- date deposited;
- from whom received;
- amount of deposit;
- property address or legal description including unit number (if unit number is applicable); and
- category or purpose of receipt (e.g., earnest money, rent, security deposit, funds from owner, etc.).

(3) Wrongful deposits. The following actions involving any trust account shall be improper and shall constitute commingling:

- depositing a broker's own funds into a trust account without disclosure to the owner of a managed property;
- depositing funds in a trust account that are not directly related to a real estate transaction or a managed property; and
- depositing funds of others in an account that is not a properly designated trust account.

B. Disbursements. All trust account disbursements shall conform to the following requirements.

(1) Timeliness. All funds of others pertaining to a real estate transaction shall be disbursed as soon as reasonably possible after the conclusion of a transaction.

(2) Disbursement records. A detailed record of all funds disbursed shall be maintained by the qualifying broker and shall clearly indicate the following:

- check number or unique transaction identification number;
- date of disbursement;
- payee;
- category or purpose of disbursement;
- amount of disbursement;
- property address or legal description including unit number (if unit number is applicable).

(3) Fees due broker. Fees as determined by written agreement may be disbursed as soon as the basis for calculation can be determined and funds are available.

(4) Wrongful disbursements. The following actions involving any trust account shall be improper and shall constitute commingling:

- disbursing trust funds for personal use of the qualifying broker or the broker's designee;
- disbursing commission or commission splits from any trust account to any entity other than the qualifying broker.
- disbursing New Mexico gross receipts tax or other non-property related business expenses directly from a trust account;
- disbursing funds before the completion of the related transaction, except upon court order; this provision does not prevent a broker from transferring funds from one properly designated trust account to another properly designated trust account within the same brokerage;
- disbursing funds in excess of the trust account balance or in excess of a specific property or client ledger balance; and
- trust account overages can only be disbursed in accordance with the Unclaimed Property Act with written notification to the commission.

C. Commingling. Commingling of trust account funds is not permitted. Commingling shall include, but is not limited to, the following actions:

- (1) wrongful deposits as described in this section;
- (2) wrongful disbursements as described in this section;
- (3) allowing a property or client ledger within a trust account to be in deficit;
- (4) placing funds derived from the management of the qualifying broker's personally owned properties, or properties owned by any legally recognized entity in which the qualifying broker has a ten (10) percent or more interest in a trust account containing funds of others;
- (5) failing to withdraw from the trust account within a reasonable time, funds to which the qualifying broker is entitled;
- (6) allowing money designated to one property or transaction to be used for the benefit of another property or transaction.

D. Exceptions to commingling.

(1) Non-trust funds may be placed in a trust account in an amount not to exceed the required minimum balance requirements of a financial institution necessary to maintain the account and avoid charges.

(2) Non-trust funds may be placed in a trust account in order to pay fees for credit card transactions and bank fees.

(3) Depositing a broker's own funds in a trust account with full disclosure to the owner of a managed property and with specific, prior written approval of the commission followed immediately by written documentation to the owner and to the commission of the deposit transaction.

(4) If a written sharing agreement specifies, funds of one property may be used for the benefit of another property owned by the same person or entity.

(5) Funds received from an owner for the benefit of all their managed properties may be credited to an owner's ledger.

[16.61.23.11 NMAC - Rp, 16.61.23.10 NMAC, 1-1-2012; A. 1-1-2014]

## **PART 24**

### **PROPERTY MANAGEMENT**

#### **16.61.24.7. Definitions.**

Refer to Definitions 16.61.1.7 NMAC.

[16.61.24.7 NMAC - Rp, 16.61.24.7 NMAC, 1-1-2012]

#### **16.61.24.8. Property management advisory committee.**

The commission may appoint a property management advisory committee (PMAC) with the goal of enhancing the professional competence of property managers and reducing violations and complaints about property management services.

[16.61.24.8 NMAC - N, 1-1-2012]

#### **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.

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

#### **16.61.24.10. Compliance with applicable law.**

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

[16.61.24.10 NMAC - N, 1-1-2012]

#### **16.61.24.11. Property management trust account.**

In addition to the rules set forth in 16.61.23 NMAC, the following also apply to property management trust accounts.



A. This account shall only contain funds derived from the management of property for others and shall be clearly identified as a property management trust account.

B. All funds received by the qualifying broker shall be deposited into the property management trust account prior to any disbursements. Once deposited, the qualifying broker may then disburse funds as specified in the management agreement.

C. Deposits from tenants shall be placed in a property management trust account. Deposits may be held in a property management trust account or may be disbursed to the owner as specified in the property management agreement and agreed to by the tenant.

D. Commingling of funds is not permitted. No funds may be deposited in a property management trust account that are not received in connection with a managed property except as provided for in 16.61.23 NMAC (Exceptions to commingling).

E. Property ledgers. When the property management trust account contains funds from the rental or lease of more than one property, separate accounting records shall be maintained on each property.

[16.61.24.11 NMAC - Rp, 16.61.24.8 NMAC, 1-1-2012; A, 1-1-2014]

#### **16.61.24.12. Reports and documents to owners.**

A. Owner statements. The qualifying broker shall provide the owner with a report of receipts and disbursements monthly or as required by the management agreement, showing the following:

- (1) previous balance;
- (2) funds deposited by category;
- (3) funds disbursed by category; and
- (4) ending balance.

B. Additional reports may be provided as set forth in the property management agreement.

~~C.~~ Documents. Fully executed copies of the management agreement shall be provided to the owner after obtaining all signatures. Except as otherwise provided herein, signed leases or other documents related to the management agreement shall be provided to the owner upon request.

D. Final statement after termination. Final accounting of trust account funds shall be provided to the owner within 60 days of the effective date of termination of a management agreement.

[16.61.24.12 NMAC - Rp, 16.61.24.12 NMAC, 1-1-2012; A, 1-1-2014]

#### **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.~~ shall specify that the brokerage relationship between the property manager and the owner is an agency 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; and
- (3) disclosure of all fees to be charged to tenant that are retained by the brokerage.
- (4) Disclosure of the status of any foreclosure or other financial situation that could affect the tenant's residency.

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

#### **16.61.24.14. Tenancy agreements.**

There shall be a signed written tenancy agreement for each property or rental unit. Tenancy agreements shall include, but not be 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.

[16.61.24.14 NMAC - Rp, 16.61.24.14 NMAC, 1-1-2012]

#### **16.61.24.15. Record accessibility, retention and inspection.**

The property management brokerage shall maintain office records of all properties managed for others.

A. Accessibility. Records shall be maintained at or accessible from the brokerage office at the location as registered with the commission.

B. Retention. All property management records shall be retained for the full term of any agreement and for six years from the termination of the management agreement.

C. Inspection. All records are subject to inspection by the commission or its duly appointed representative at or accessible from the brokerage office or at the offices of the commission.

D. The qualifying broker is responsible for the maintenance and safe-keeping of all property management records.

[16.61.24.15 NMAC - Rp, 16.61.24.15 NMAC, 1-1-2012]

#### **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.

B. Tenancy 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 (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. Reports to owners. In the monthly statement to the owner, the qualifying broker shall also list rental income, credit card fees, maintenance charges and amount paid in commission to the brokerage office.

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

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

F. 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]

## PART 25

### TIME SHARE REGISTRATION

#### 16.61.25.7. Definitions.

A. "Commission" means the New Mexico real estate commission.

B. "Developer" means any person creating or engaged in the business of selling ten or more of its own time shares and includes any person who controls, is controlled by or is in common control with the developer and who is engaged in creating or selling time shares for the developer;

C. "Exchange company" means any person operating an exchange program;

D. "Purchaser" means any person, other than a developer or lender, who owns or acquires an interest or proposes to acquire an interest in a time share;

E. "Time share salesperson" means a person, other than a person who has at least a fifteen (15) percent interest in the developer, who sells or offers to sell on behalf of a developer a time share to a purchaser; and

[8-15-97, A, 2-14-2000; 16.61.25.7 NMAC - Rn & A, 16 NMAC 61.25.7, 1-1-2002]

[Refer to 16.61.1.7 NMAC]

#### 16.61.25.8. Application for registration.

Every application for time share project registration shall be filed at the commission office upon form TS-1 (questionnaire and application for registration of time share project) and shall contain all information requested by form TS-1 applicable to the time share project.

A. Registration fee: Every application for time share project registration must be accompanied by a certified check made payable to the New Mexico real

estate commission in the amount of twenty dollars (\$20.00) per time share interest to be sold, to a maximum of one thousand five hundred dollars (\$1,500.00). Applications for registration not accompanied by the appropriate fee shall not be considered by the commission. In the event a properly completed application filed with the commission is denied for any reason, the amount of two hundred fifty dollars (\$250.00) shall be retained by the commission from the application fee and the balance refunded to the applicant developer.

B. A developer shall obtain a separate certificate of registration for each time share program. Noncontiguous time share projects created by the same developer may be treated for registration purposes as one time share program only if such projects are (1) marketed and otherwise held out to the public as one program, and (2) offered for sale by a single staff of time share salespersons.

C. A developer shall file an amendment to the time share project registration with the commission within a reasonable time after the occurrence of any event or change in plans which materially affects the operation or status of the time share project, including but not limited to the following:

- (1) a material change in ownership of the developer;
- (2) an increase or decrease in the number of time shares to be offered;
- (3) any material alteration of the physical plant and amenities, or of plans for development thereof;
- (4) any material change in the exchange rights offered to purchasers;
- (5) the appearance of new hazards or other unusual conditions near the time share project;
- (6) any material amendment to the documents governing rights and restrictions of time share ownership
- (7) the recording of any new lien or encumbrance against the time share project;
- (8) any change in management of the time share project;
- (9) any material change in the developer's arrangement for the Escrow of purchaser's funds; and,
- (10) any other change requiring a material amendment to the disclosure statement for the project.

D. Amendments to the time share project registration shall be made in writing to the commission. Every amendment shall identify the section of the project registration to be amended and shall contain a summary of the amendment and a brief statement of the reasons for the amendment. The amendment shall include either the text of the project registration section to be substituted or a copy of the document to be modified.

E. The commission may, in its discretion, require the developer to file a new time share project registration application in the place of an amendment form. Such refiling shall be without a fee.

F. If a developer files an amendment to increase the number of time shares to be offered for sale, a registration fee of twenty dollars (\$20.00) per additional time share interest, subject to the overall maximum of one thousand five hundred dollars (\$1,500.00), shall accompany the amendment.

[8-15-97; 16.61.25.8 NMAC - Rn, 16 NMAC 61.25.8, 1-1-2002]

**16.61.25.9. Disclosure statements.**

A. In addition to the disclosures required by Section 5 of the act, each developer shall fully and conspicuously disclose to each purchaser in the disclosure statement the following information:

(1) if any part of the project is not completely constructed at the time of sale, what financial arrangements have been made to secure the completion of each portion.

(2) if the unit sold to the purchaser is not completely constructed and furnished at the time of sale, the projected date the unit will be ready for occupancy; any limitations upon the purchaser's exchange rights until the unit is ready for occupancy; any limitations upon the effectiveness of title insurance obtained by the purchaser prior to the time the unit is ready for occupancy;

(3) a complete description of the project, including: the total number of time shares sold and to be sold in the project; the number and types of units available; the types of facilities and amenities available;

(4) a description of all terms and conditions of each charter membership, owner referral, rental, resale, in-house exchange or other program offered to time share owners; provided, however, if no reference to the program will be made to the purchaser prior to the expiration of the purchaser's 7-day right of rescission, the developer may provide such description, by separate letter to the purchaser, after the expiration of such period; and

(5) any other information contained in the questionnaire and application for registration of time share project which the commission may require to be disclosed.

B. Every disclosure statement shall contain an introductory summary prescribed by the commission and completed by the developer entitled "summary of disclosures." The "summary of disclosures" shall appear on the cover, or immediately following the cover of the disclosure statement, and shall be on the form prescribed by the commission. "Summary of disclosures" forms are available upon request at the commission office.

C. Information contained in a disclosure statement shall be accurate on the date it is supplied to a purchaser.

[8-15-97; 16.61.25.9 NMAC - Rn, 16 NMAC 61.25.9, 1-1-2002]

**16.61.25.10. Description of interest in time share property; recordation.**

All contracts and deeds conveying an interest in a time share must contain a legal description of the time share project, time share unit and interval number for which the interest is being conveyed, if applicable. The developer shall not record a conveyance instrument until after the expiration of the purchaser's 7-day right of rescission.

[8-15-97; 16.61.25.10 NMAC - Rn, 16 NMAC 61.25.10, 1-1-2002]

**16.61.25.11. Questionnaire and application.**

The "questionnaire and application for registration of time share project" (form TS-1) shall be made on the form prescribed by the commission.

Questionnaire and application forms are available upon request at the commission office.

[8-15-97; 16.61.25.11 NMAC - Rn, 16 NMAC 61.25.11, 1-1-2002]

### **16.61.25.12. License requirements.**

Any individual, including a tour guide, who shows time share units or facilities to prospective purchasers, shall hold a New Mexico real estate associate broker's or qualifying broker's license. No person except the developer may participate in any part of a time share sales presentation unless that person holds a New Mexico real estate associate broker or qualifying broker license.

[8-15-97, A, 2-14-2000; 16.61.25.12 NMAC - Rn, 16 NMAC 61.25.12, 1-1-2002; A, 1-1-2006]

### **16.61.25.13. Developers.**

Every developer of a time share project registered in this state shall, in addition to any other requirements by law:

A. Maintain a full and complete record of all transactions wherein that developer or any real estate associate broker or qualifying broker representing said developer are engaged. All records shall contain, but are not limited to:

(1) record of all purchases, sales, leases or exchanges of time share interests in the registered time share project;

(2) the name or names of the buyer and seller, or in the case of exchanges, the names of the parties thereto;

(3) the date or dates of such transactions;

(4) the amount, if any, of the commission earned in such transaction; and,

(5) the amount, if any, of the commission or commissions paid by the qualifying broker or the developer to an associate broker and the amount, if any, of the commission or commissions retained by the qualifying broker or developer.

B. All sales of time share interests by associate brokers must be through the qualifying broker of the time share project, and all commissions to such associate brokers must be disbursed by the qualifying broker. If a qualifying broker transfers his license from a time share project and all commissions earned by associate brokers have not been disbursed, those commissions must be accounted for and remitted within a reasonable time by the time share developer.

C. The records required to be maintained by these regulations will be available to the commission or its duly authorized representative at the location of the registered time share project in New Mexico, at the location of the time share sales office in New Mexico, or at the commission offices.

[8-15-97, A, 2-14-2000; 16.61.25.13 NMAC - Rn & A, 16 NMAC 61.25.13, 1-1-2002; A, 1-1-2006]

### **16.61.25.14. Trust accounts.**

Records to be maintained. Every developer of a time share project registered in New Mexico shall, within a reasonable time, account for and remit any money coming into his possession which belongs to others during the sale of a

time share interest. Such developer shall keep such funds of others in an Escrow or trust account maintained by him in a bank or savings and loan institution or title company authorized to do business in this state. Such developer shall not commingle funds of others with his own. Every developer of a time share project registered in this state shall maintain full and complete records of all funds deposited in his trust account. Such records shall clearly indicate the date and from whom the money was received, date deposited, date of withdrawal, and any other pertinent information concerning the transaction. The records shall clearly show for whose account the money is deposited and to whom the money belongs. All such records and funds shall be subject to inspection by the commission or its duly authorized representative at the location in New Mexico of the registered time share project, the location in New Mexico of the time share sales office, or at the commission offices.

[8-15-97, A, 2-14-2000; 16.61.25.14 NMAC - Rn, 16 NMAC 61.25.14, 1-1-2002; A, 1-1-2006]

## **PART 26**

### **LAND TITLE TRUST FUND ACT**

#### **16.61.26.7. Definitions.**

Refer to 16.61.1.7.

[16.61.26.7 NMAC - N, 1-1-2002]

#### **16.61.26.8. Trust accounts, escrow accounts, special accounts, pooled interest-bearing accounts, and disposition of earned interest on certain accounts.**

A. Every real estate qualifying broker who maintains a trust or Escrow account as required pursuant to the provisions of Subsection H of 61-29-12 NMSA 1978 may maintain a pooled interest-bearing Escrow account and may deposit all customer funds into that account except for:

(1) funds required to be deposited into a property management trust account under an express property management agreement; or

(2) funds required to be deposited into an interest-bearing account under an express agreement between the parties to a transaction and under which agreement provisions are made for the payment of interest to be earned on the funds deposited.

B. The following procedures and forms should be used in establishing and operating pooled interest-bearing Escrow accounts.

(1) Form 5828-1 instructions for financial institutions regarding processing land title trust fund act and low income housing trust fund act accounts.

(2) Form 5828-2 account enrollment and agreement between company and financial institution.

(3) Form 5828-3 financial institution report of interest remittance.

[16.61.26.8 NMAC - N, 1-1-2002; A, 1-1-2006]

**PART 27****FOREIGN BROKERS****[REPEALED]**

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

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

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

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

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

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

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

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

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

e. comply with and be bound by and subject to New Mexico law and the rules of the real estate commission; and

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

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

**PART 28****[RESERVED]****PART 29****TRADE NAME****16.61.29.7. Definitions.**

Refer to 16.61.1.7 NMAC.

[16.61.29.7 NMAC - Rp, 16 NMAC 61.29.8, 1-1-2002]

### **16.61.29.8. Registration and use of trade name.**

A. Prior to the use of any trade name for the operation of a brokerage, the qualifying broker shall register such trade name with the commission. A qualifying broker must conduct their real estate brokerage business under a trade name registered with the commission. A qualifying broker wishing to conduct real estate brokerage business under a different trade name must execute a new trade name registration form, provide verification of current errors and omission coverage and pay the required fee with the commission.

B. When a brokerage ceases using a trade name, the qualifying broker shall, within 10 days, return the qualifying broker's license and the licenses of all qualifying and associate brokers affiliated with the brokerage to the commission, advise the commission in writing that the trade name is no longer being used, and remove all signs and advertising using the trade name.

C. Use of a trade name in such a fashion as to mislead the public may be grounds for disciplinary action by the commission.

D. An associate broker executing a trade name registration form for the purposes of reinstating qualifying broker status shall be required, as a condition of reinstatement, to provide documentation of having completed the commission-approved minimum four-hour qualifying broker refresher course during the current license renewal cycle.

[16.61.29.8 NMAC - Rp, 16 NMAC 61.29.8, 1-1-2002; A, 1-1-2006; A, 1-1-2012]

**BRANCH OFFICE/TEMPORARY OFFICE**  
**[REPEALED 01-01-06]**

**PART 31**

**SIGNAGE**

**16.61.31.7. Definitions.**

Refer to 16.61.1.7 NMAC.

[1-1-2000; 16.61.31.7 NMAC - Rn, 16 NMAC 61.31.7, 1-1-2002]

**16.61.31.8. Requirements.**

A. Each qualifying broker shall place and maintain a legible sign in a conspicuous place near the office entrance identifying them as the qualifying broker. The trade name of the brokerage as registered with the commission shall be clearly shown.

B. In the case of a qualifying broker whose office is located in an office building, the qualifying broker may comply with this regulation by listing their name on the directory of offices provided by the office building and by displaying the trade name on or near the office entrance.

[1-1-2000, A, 2-14-2000; 16.61.31.8 NMAC - Rn, 16 NMAC 61.31.8, 1-1-2002; A, 12-31-2008]

**PART 32**

**REAL ESTATE ADVERTISING**

**16.61.32.7. Definitions.**

Refer to 16.61.1.7 NMAC.

[1-1-2000; 16.61.32.7 NMAC - Rn, 16 NMAC 61.32.7, 1-1-2002]

**16.61.32.8. Advertisements.**

~~A. All real estate advertising shall be a true and factual representation of the property and real estate services being advertised and the brokerage providing the services and shall not be presented in such a manner that will confuse or mislead the public. including advertising in which an associate broker's name or team name is presented in such a way as to give the impression that the associate broker's name or team name is a trade name registered with the commission.~~

B. Every qualifying broker advertising real property for others for sale, purchase, lease, exchange or rent, including short-term or vacation rentals, or advertising real estate services, shall at a minimum, use in such advertising the trade name and current brokerage office telephone number as registered with the commission, and the qualifying broker's license number in a legible format. Directional signs are exempt from these requirements. Additional telephone numbers may be used in such advertising.

C. Associate brokers, when advertising real property for others for sale, purchase, lease, exchange or rent, or when advertising real estate services,

shall include in the advertisement the trade name and current telephone number as registered with the commission of the brokerage with which they are affiliated. Effective \_\_\_\_\_ the trade name and the brokerage office telephone number shall be prominently displayed in a type size not less than 33 percent of the associate broker's name, or in the case of a team of associate brokers, the team name. The associate broker's license number shall be displayed in all advertising in a legible format. Directional signs are exempt from these requirements.

D. A broker advertising to sell, or exchange real property which the broker owns or partially owns shall indicate within such advertising, including signs, that the broker owns the real property. Disclosure of such ownership must also be made in the listing contract, purchase agreement, or exchange agreement. If an owner-broker engages a third party broker to list the owner-broker's property, the third party broker is not required to make an owner-broker disclosure in advertising and signs, but such disclosure is required in the listing contract, purchase agreement or exchange agreement. A broker advertising to rent or lease real property which the broker owns or partially owns is not required to disclose such ownership in advertising and signs, but is required to make such disclosure in rental or lease agreements.

E. When advertising real property owned by a broker and the telephone number of the brokerage is used in the advertisement, the advertisement must also include the trade name of the brokerage as registered with the commission.

F. All advertising must be in compliance with all local, state and federal laws and regulations.

G. These requirements apply to all forms of advertising, including but not limited to print, audio and video recordings, computer presentations, online and electronic media. In the event that disclosure of the brokerage name and telephone number as registered with the Commission is not practical in electronic displays of limited information, such as "thumbnails", text messages, links and "tweets" of 200 characters or less, such displays are exempt from the disclosure requirement provided such displays are linked to a display that includes all of the required disclosures.

[N, 1-1-2000; 16.61.32.8 NMAC - Rn, 16 NMAC 61.32.8, 1-1-2002; A, 1-1-2006; A, 1-1-2007; A, 1-1-2012]

## **PART 33**

### **DOCUMENT EXECUTION AND DELIVERY**

#### **16.61.33.7. Definitions.**

Refer to 16.61.1.7.

[16.61.33.7 NMAC - Rp, 16 NMAC 61.33.7, 1-1-2002]

#### **16.61.33.8. Execution of documents.**

All transactions shall be documented and signed by all parties to the transaction.

[16.61.33.8 NMAC - Rp, 16 NMAC 61.33.8, 1-1-2002]

#### **16.61.33.9. Delivery of documents.**

Except as otherwise provided by law, in all circumstances it shall be the responsibility of each broker engaged in a transaction to assure that all parties

to the transaction receive legible copies of any and all documents they have signed and any documents that pertain to their respective interest in the transaction as soon as practicably possible, and copies of all fully executed documents thereafter.

[16.61.33.9 NMAC - Rp, 16 NMAC 61.33.9, 1-1-2002; A, 1-1-2006]

## **[RESERVED]**

### **PART 35**

#### **CHILD SUPPORT ENFORCEMENT**

##### **16.61.35.7. Definitions.**

All terms defined in the Parental Responsibility Act shall have the same meanings in Part 35 of Chapter 61 as used in Part 35.

A. "HSD" means the New Mexico human services department;

B. "license" means a license issued by the commission that a person is required to have to engage in the profession or occupation of real estate in New Mexico;

C. "statement of compliance" means a certified statement from HSD stating that an applicant or broker is in compliance with a judgment and order for support; and

D. "statement of non-compliance" means a certified statement from HSD stating that an applicant or broker is not in compliance with a judgment and order for support.

[8-15-97, A, 2-14-2000; 16.61.35.7 NMAC - Rn, 16 NMAC 61.35.7, 1-1-2002; A, 1-1-2006]

##### **16.61.35.8. Disciplinary action.**

If a license applicant or licensed broker is not in compliance with a judgment and order for support, the commission:

A. shall deny an application for a license;

B. shall deny the renewal of the license; and

C. has grounds for suspension or revocation of the license.

[8-15-97; 16.61.35.8 NMAC - Rn & A, 16 NMAC 61.35.8, 1-1-2002; A, 1-1-2006]

##### **16.61.35.9. Certified list.**

Upon receipt of HSD's certified list of obligors not in compliance with a judgment and order for support, the commission shall match the certified list against the current list of commission brokers or broker applicants. Upon the later receipt of an application for license or renewal, the commission shall match the applicant against the current certified list. By the end of the month in which the certified list is received, the commission shall report to HSD the names of commission brokers or broker applicants who are on the certified list and the action the commission has taken in connection with such brokers or broker applicants.

[8-15-97, A, 2-14-2000; 16.61.35.9 NMAC - Rn & A, 16 NMAC 61.35.9, 1-1-2002; A, 1-1-2006]

**16.61.35.10. Initial action.**

Upon determination that a broker or broker applicant appears on the certified list, the commission shall:

A. commence a formal proceeding as set forth in Section 11 of Part 35 to take the appropriate action under Section 8 of Part 35; or

B. for current brokers only, informally notify the broker that the broker's name is on the certified list, and that the broker must provide the commission with a subsequent statement of compliance from HSD by the earlier of the application for license renewal or a specified date not to exceed thirty (30) days. If the broker fails to provide this statement, the commission shall commence a formal proceeding as set forth in Section 11 of Part 35.

[8-15-97, A, 2-14-2000; 16.61.35.10 NMAC - Rn, 16 NMAC 61.35.10, 1-1-2002; A, 1-1-2006]

**16.61.35.11. Notice of contemplated action.**

Prior to taking any action specified in Section 8 of Part 35, the commission shall serve upon the broker or broker applicant a written notice stating that:

A. the commission has grounds to take such action, and that the commission shall take such action unless the broker or broker applicant:

(1) mails a letter (certified, return receipt requested) within twenty (20) days after service of the notice requesting a hearing; or

(2) provides the commission, within thirty (30) days of the date of the notice, with a statement of compliance from HSD; and

B. if the broker or broker applicant disagrees with the determination of non-compliance, or wishes to come into compliance, the broker or broker applicant should contact the HSD child support enforcement division.

[8-15-97, A, 1-1-2000; 16.61.35.11 NMAC - Rn & A, 16 NMAC 61.35.11, 1-1-2002; A, 1-1-2006]

**16.61.35.12. Evidence and proof.**

In any hearing under Part 35 of Chapter 61, relevant evidence is limited to the following:

A. a statement of non-compliance is conclusive evidence that requires the commission to take the appropriate action under Section 8 of Part 35 of Chapter 61 unless;

B. the broker or broker applicant provides the commission a subsequent statement of compliance which shall preclude the commission from taking any action based solely on the prior statement of non-compliance.

[8-15-97; 16.61.35.12 NMAC - Rn & A, 16 NMAC 61.35.11, 1-1-2002; A, 1-1-2006]

**16.61.35.13. Order.**

When an action is taken under Part 35 of Chapter 61 solely because the license applicant or Licensee is not in compliance with a judgment and order for support, the order shall state that the application or license shall be reinstated upon presentation of a subsequent Statement of Compliance. The

Commission may also include any other conditions necessary to comply with Commission requirements for reapplication or reinstatement of lapsed licenses.

[8-15-97, A, 1-1-2000; 16.61.35.13 NMAC - Rn & A, 16 NMAC 61.35.13, 1-1-2002; A, 1-1-2006]

#### **16.61.35.14. Procedures.**

Proceedings under Part 35 of Chapter 61 shall be governed by the Uniform Licensing Act, Section 61-1-1, et seq., or any other adjudicatory procedures adopted by the commission.

[8-15-97; 16.61.35.14 NMAC - Rn, 16 NMAC 61.35.14, 1-1-2002]

### **PART 36**

## **COMPLAINTS AND INVESTIGATIONS**

#### **16.61.36.7. Definitions.**

Refer to 16.61.1.7 NMAC.

[16.61.36.7 NMAC - Rp, 16 NMAC 61.36.7, 1-1-2002]

#### **16.61.36.8. Complaints.**

The commission may file a complaint against any person who engages in the business or acts in the capacity of a real estate broker or a real estate commission approved education sponsor or instructor, in New Mexico with or without a New Mexico real estate license based on information indicating that there may have been a violation of the real estate license law or the commission rules. The commission may also act on a complaint made by a member of the commission, a member of the public, or another real estate broker. Upon receipt of a complaint the commission will determine if the complaint is within its jurisdiction. If the commission determines the complaint is within its jurisdiction, the complaint will be assigned for investigation.

[16.61.36.8 NMAC - Rp, 16 NMAC 61.36.8, 1-1-2002; A, 1-1-2006; A, 12-31-2008]

#### **16.61.36.9. Investigations.**

In conducting an investigation, the commission shall give the person under investigation the opportunity to answer the complaint made against them in writing and to produce relevant documentary evidence, in accordance with the Uniform Licensing Act. If the person under investigation fails to respond within ten (10) working days of having been provided with a copy of the complaint and having been informed by the commission in writing that a complaint has been filed against him or her, the investigation may proceed without benefit of that person's response.

A. If the investigation reveals that the complaint does not involve a violation of the Real Estate License Law or the commission rules, the



complaint will be dismissed by the commission, and the parties to the complaint will be so advised.

- B. If the investigation reveals that the complaint does involve a violation of the Real Estate License Law or the Commission Rules, the Commission may refer the complaint to the Attorney General's Office and request that a Notice of Contemplated Action (NCA) be issued to the respondent, or offer the respondent a pre-NCA settlement with the understanding that if the respondent does not accept the settlement offer the complaint will be referred to the Attorney General's Office for the issuance of an NCA.

C. Withdrawal of a complaint by a member of the commission, a member of the public, or another broker does not bind the commission to dismiss the complaint.

[16.61.36.9 NMAC - Rp, 16 NMAC 61.36.9, 1-1-2002; A, 1-1-2006]

