

NEW MEXICO REAL ESTATE COMMISSION
NOTICE OF RULE HEARING
FEBRUARY 19, 2016

The New Mexico Real Estate Commission will hold a public rule hearing on Friday, February 19, 2016 at 9:00 a.m. at the offices of the Greater Albuquerque Association of Realtors, 1635 University Boulevard NE in Albuquerque, New Mexico.

The Commission is seeking real estate broker and public input on proposed changes to the rules detailed below. The Commission will take final action on proposed rules at its March 21, 2016 regular meeting to be held at 9:00 a.m. at the Commission offices at 5500 San Antonio Drive NE in Albuquerque.

Copies of the proposed rule changes are available from the Commission office at 5500 San Antonio Drive NE, Suite B, Albuquerque, New Mexico or from the Commission web site at www.rld.state.nm.us. Copies of the agenda for the rule hearing may be obtained from the Commission office no later than seventy two (72) hours before the hearing.

Real estate brokers and members of the public may comment on the proposed rule changes during the hearing and may submit written comments to the Commission up to the day of the hearing. Written comments submitted prior to the hearing should be mailed to Wayne W. Ciddio, Executive Secretary, New Mexico Real Estate Commission, 5500 San Antonio Drive NE, Suite B, Albuquerque, New Mexico 87109 or emailed to Mr. Ciddio at wayne.ciddio@state.nm.us.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the rule hearing, please contact Wayne W. Ciddio, Executive Secretary, New Mexico Real Estate Commission at (505) 222-9829 or by email at wayne.ciddio@state.nm.us at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and proposed rule changes, can be provided in various accessible formats. Please contact Mr. Ciddio if a summary or other type of accessible format is needed.

Proposed Change, Part 3, Examination and Licensing Application Requirements

An extension of the waiver of the national portion of the broker's examination to New Mexico associate brokers upgrading to qualifying broker.

Discussion

Real estate brokers licensed in other states applying for New Mexico licenses are not required to take the national portion of the broker's exam which is standard across the country. The proposed change would extend the waiver of the national portion of the exam to New Mexico associate brokers upgrading to qualifying broker.

Proposed Change, Part 5, Errors and Omissions Insurance

An amendment clarifying that an errors and omissions insurance policy will include a 90-day extended reporting period as part of the basic policy. Also known as "tail coverage", an extended reporting period covers claims made after a policy expires.

Discussion

The current rule erroneously states that errors and omissions insurance policies should include a 365-day extended reporting period. Although a 365-day extended reporting period is available by paying an additional premium, it is not part of a basic policy.

Proposed Change, Part 6, Designation of a Qualifying Broker to Qualify a Real Estate Brokerage

An amendment specifying that a business entity wishing to engage in real estate brokerage activity must designate a qualifying broker to qualify that business to engage in brokerage activity.

Discussion

The current rule states that the Commission will issue a qualifying broker's license to an individual that meets the requirements for such license, but does not say that a business entity must have a qualifying broker in order to engage in real estate brokerage. The change would insert that language and make the rule consistent with the definition of qualifying broker in the Definitions section of the rules.

Proposed Change, Part 7, Fingerprinting and Arrest Records Checks

An amendment providing that license or license renewal applicants be fingerprinted no earlier than twenty-one (21) days prior to making application for licensure or license renewal.

Discussion

The current rule allows license applicants to be fingerprinted up to six (6) months prior their application for licensure or license renewal. Because criminal background checks generated by fingerprinting are only accessible to Commission investigators for thirty (30) days after fingerprinting, a rule change is necessary to be able to access this information within the 30-day window.

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

Renaming the Education Steering Committee the Education Advisory Committee, restructuring the Committee, and granting continuing education credit for attending Committee meetings.

An amendment to continuing education rules replacing the eight (8) hour Mandatory Course required of all brokers every three (3) years with a four (4) hour Core Course required annually. Increasing from 30 hours to 36 hours continuing education required as a condition of license renewal.

Discussion

The Education Steering Committee is appointed by the Commission to review and make recommendations to the Commission on applications from individuals seeking approval to instruct and offer pre-licensing and continuing education courses. The proposed change would rename the committee the Education Advisory Committee, restructure the committee to make it less instructor-dominated, and allow brokers to earn continuing education credit by attending committee meetings. Brokers are currently allowed to earn up to four (4) hours of continuing education credit every three years by attending Commission meetings, disciplinary hearings, and rule hearings.

Based on a survey of more than 1,000 brokers the Commission is proposing to replace the current eight (8) hour course that focuses primarily on rules with a four (4) hour course that includes an annual review of broker duties, law and rules updates, errors and omissions insurance claims information, and disciplinary case studies.

The increase in total hours required for license renewal is a reflection of the Commission's desire to have better educated brokers in the field to counteract an increasing number of complaints and errors and omissions insurance claims.

Proposed Changes, Part 16, Qualifying Broker: Affiliation and Responsibilities

A requirement that the name and contact information of the qualifying broker be included in every express written agreement between a brokerage and a customer or client.

A requirement that broker's license numbers be included in all forms of advertising.

An amendment to the Qualifying Broker rule allowing “virtual” real estate offices to display their licenses on the brokerage web site.

An amendment to the Qualifying Broker rule allowing qualifying brokers to substitute an electronic copy of the current Commission Law and Rule Book for a paper copy to be maintained in the brokerage office.

Discussion

Because the qualifying broker is responsible for all activity conducted by the brokerage, requiring that the qualifying broker’s name, contact information, and license number be clearly displayed in all written documents and advertising would make it easier for consumers to contact the qualifying broker if they had a question or concern about a transaction.

Because the current rule requiring the display in the brokerage office of the licenses of all affiliated brokers was written with a “bricks and mortar” office in mind, the proposed change would recognize that some brokerages operate “virtual” web-based brokerages.

The proposed change would allow qualifying brokers to substitute an on-line copy of the Commission Law and Rule book available on the Commission web site for a paper copy.

Proposed Change, Part 17, Associate Broker: Affiliation and Responsibilities

An amendment to the Associate Broker rule clarifying that an associate broker who puts their license on inactive status at the time of initial licensure will have one year from the time they activate their license to complete the New Broker Business Practices course.

Discussion

Brokers are currently required to complete the New Broker Business Practices course within their first year of licensure. Because new brokers are allowed to place their licenses on inactive status until they find a qualifying broker with whom to affiliate, the rule is being changed to allow associate brokers one year from when they activate their license to complete the course.

Proposed Changes, Part 19, Broker Duties and Brokerage Relationships

An amendment to the Broker Duties rule adding “ethical and professional conduct” to the current broker duty of “honesty and reasonable care”.

A rewrite of the broker duties rule breaking out which duties are owed to (a) property owners and tenants (b) customers and clients and (3) other brokers.

Discussion

This rule change, in combination with a new definition of “honesty, reasonable care, and ethical and professional conduct”, would give the Commission flexibility to prosecute cases in which ethical and professional behavior, although not in direct violation of a specific license law or rule, are at issue.

The most important Commission Rules are those which specify what duties are owed to consumers by real estate brokers prior to and in the course of a real estate transaction. They include honesty and reasonable care, compliance with applicable local, state, and federal laws, prompt accounting for clients’ money, disclosure of adverse material facts, disclosure of conflicts of interest, and others. They are also the most debated and contentious rules.

The proposed rules would specify which broker duties are owed to property owners and tenants, clients and customers, and other brokers. Significantly, the changes would bring the Commission Rules in line with the Owner Resident Relations Act which specifies that brokers managing property for others are the exclusive agents of property owners.

Proposed Changes, Part 27, Foreign Brokers

Reinstating the “foreign broker” rule reflecting the revised foreign broker law passed by the 2014 legislature.

Creating a definition of “commercial real estate” to be consistent with the definition in the new foreign broker law.

Discussion

“Foreign brokers” are real estate brokers licensed by other states doing real estate business in New Mexico without a New Mexico license through a co-brokerage agreement with a New Mexico licensed qualifying broker.

The legislature repealed the foreign broker law in 2013 but reinstated it in 2014 with a provision that it be limited to commercial transactions. The proposed rule would reinstate the “foreign broker” rule in the Commission Rules and create a definition of “commercial real estate” consistent with the definition in the foreign broker statute.

Proposed Changes, Part 32 Advertising

Requiring associate brokers and qualifying brokers to include their license numbers in any form of advertising.

Strengthening the advertising rule to ensure that the name and telephone number of the brokerage with which associate brokers are affiliated are prominently displayed in any advertising conducted by associate brokers or teams of associate brokers.

Adding to the advertising rule language that accommodates the limitations of some forms of social media.

Discussion

A broker’s license number is the best identifier in an advertisement that may include an associate broker’s name, a team name, and a brokerage name. The proposed rule would require brokers to include their license number or numbers in any form of advertising.

The emergence of a business model in which teams of associate brokers are encouraged by brokerage firms to establish their own identities has led to consumer confusion about who they are dealing with and who are the responsible parties. The proposed rule would require associate brokers and teams of associate brokers to display the trade name and telephone number of the brokerage with which they are affiliated in a type size no smaller than 33 percent of the size of the name of the associate broker or team of associate brokers.

Currently, character limitations in some forms of social media make it difficult for brokers to make the required disclosures in advertising. The proposed rule would exempt such advertising from disclosure requirements provided that displays are linked to a display that includes all of the required disclosures.

Proposed Change, Part 36, Complaints and Investigations

An amendment giving the Commission specific authority to offer settlement agreements in disciplinary cases in lieu of referring such cases to the Attorney General’s Office for prosecution

Discussion

For years, the Commission has offered respondents in disciplinary cases pre-Notice of Contemplated Action (NCA) settlement offers to resolve cases of a minor or technical nature in lieu of sending the cases to the Attorney General’s Office for prosecution. The result has been that many cases are resolved quickly and without the time and expense involved in a formal disciplinary hearing.

The Commission is proposing an amendment to its Complaints and Investigations Rule that would specifically give it the authority to make such offers with the understanding that if a respondent declines the offer the case is referred to the Attorney General's Office for prosecution.